CAPTURE IN WAR ON LAND AND SEA

HANS WEHBERG

WITH AN INTRODUCTION BY
JOHN M. ROBERTSON, M.P.

CAPTURE IN WAR ON LAND AND SEA

CAPTURE IN WAR ON LAND AND SEA

BY

HANS WEHBERG, Dr. Jur.

(DÜSSELDORF)

Translated from
Das Beuterecht im Land- und Seekriege

WITH AN INTRODUCTION BY

JOHN M. ROBERTSON, M.P.

LONDON:

P. S. KING & SON

ORCHARD HOUSE, WESTMINSTER

1911

CONTENTS.

		PAGE
INTRODUCTION		v
CHAPTER I.	HISTORICAL REVIEW: FIRST PRINCIPLES OF LAW OF PRIZE ON SEA AND LAND	1
	LAW OF PRIZE ON LAND.	
II.	NATIONAL PROPERTY	25
III.	RAILWAYS, ETC.	30
IV.	PRIVATE PROPERTY	38
	LAW OF PRIZE ON SEA.	
V.	TIME AND PLACE OF SEIZURE	54
VI.	OBJECT OF SEIZURE	68
VII.	BRINGING-TO AND SEARCH.	94
	NECESSITY FOR THE ABOLITION OF THE LAW OF PRIZE AT SEA.	
VIII.	REASONS FOR RETENTION OF THE LAW	111
IX.	REASONS FOR ABOLITION OF THE LAW	129
X.	INDIRECT EFFECTS OF THE LAW UPON NEUTRALS	146
XI.	DIRECT EFFECTS OF THE LAW UPON NEUTRALS	159
XII.	ENGLAND AND THE LAW OF PRIZE AT SEA, PARTICULARLY IN COMPARISON WITH GERMANY	172
XIII.	SUGGESTIONS FOR REFORM	182
	BIBLIOGRAPHY	193
	INDEX	203

INTRODUCTION.

The appeal made by the valuable work of Dr. Wehberg to British readers may be said to direct itself mainly to one of the two great classes into which, as regards military matters, they may be roughly divided. On one side is the multitude, still lamentably large, whose reflection on the problem of militarism begins and ends in sheer pride in the parade of power. Such minds have a brilliant exponent in Mr. Rudyard Kipling, whose zest in all the paraphernalia as well as the psychology of carnage is such that the hope of international peace appears to be for him, as for Von Moltke, "not even a beautiful dream." To such intelligences, the life of training for slaughter is "the lordliest life on earth"; and the spectacle of drilled hosts and monstrous fleets is a source of keener pleasure than they can derive from any ideal of a reign of peace and reason. Further, they are ministered to by the simple dialectic of Tennyson, to the effect that the evils of the life of peace are somehow mended or minimised by vast

explosions of the brutality and misery of war. With most of that order of thinkers it is scarcely worth while to debate. Their bias is fixed.

In another great division may be classed not only the active strivers for peace between nations—not even now a very large body—but, happily, the mass of reasonably-minded men, who, realising how frustrative of social good and how menacing of international evil is the enormous and ever-increasing expenditure of the nations on armaments, wonder perplexedly whether nothing can be done to stay it. It may be hoped that this mixed body of non-militarists is the larger mass of the two specified; and that the limitation of the political eloquence of one of our political parties, in respect of this problem, to the theme of "need for defence" does not mean a universal preference in that party for the attitude of armed distrust over one of rational understanding. Outside of Sir Edward Grey's own party, there appears to be not a little acquiescence in his avowal that, unless the growth of the burden of universal militarism can be arrested, civilisation must break down under the strain. It is to men who realise the danger, while unable to see their way to remove it, that the work of Dr. Wehberg offers its pregnant suggestion.

That suggestion is, in brief, that naval

armaments in particular are largely the outcome of the risks and the consequent fears set up by the continuance of the principle that in naval warfare the belligerents are free to capture each other's commerce. Herein, as his book will make clear to the reader, naval warfare has failed to undergo the control now laid by common consent upon land warfare. In the latter, booty for booty's sake is disallowed by the military codes of all the civilised Powers. It is important to have the fact made generally known; for the brilliant author of "Sea Law and Sea Power," Mr. T. G. Bowles, continues to make the misleading assertion that in war on land private property is "at the absolute mercy of any military commander," and that those who propose the abandonment of booty-right at sea lay down their doctrine only for sea-wars. The anomaly lies exactly the other way. The civilised Powers are under agreement to respect private property in land wars. An army may take food, stores, and bullion where it needs these for its maintenance; but it may not seize the goods of non-combatants by way of mere plunder. With navies it is different. Naval warfare is latterly so rare that the usage is not present to the common consciousness; but if a war should break out in these days between two or more Sea Powers, they would at once

proceed to capture each other's merchant ships and retain or sell them and their cargoes.

It is naturally upon this ground that the appeals of the British and German Navy Leagues for more warships are mainly founded; and the first step towards any rational understanding on the subject must be the recognition by the reasonable public in both countries that each has ground for apprehension. True, Germany need not under any circumstances fear an invasion by Britain; while insular Britain, with her small army, may fairly plead a special need for naval defence. But as regards commerce, the situation is pretty even. Even if Germans were not spontaneously concerned to defend their growing commerce, the avowals of English statesmen no less than the vaunts of English warmongers would awaken them to the fact that a war between them and us would mean the risk of the capture of their merchant marine. Thus the German Dreadnoughts are as perfectly justified as the British Dreadnoughts which preceded and have followed them. They are defences for the German ports and for commerce in the North Sea; and to regard them as built for purposes of aggression is to substitute fantasy for common-sense.

Britain, on the other hand, may well claim on the same principles to be guarding

no less her commerce than her shores. As our Navy League thinks it necessary annually to remind us, our food supply is largely sea-borne; and the interception of that would mean our subjugation. Hence the monster fleet, and all the rest of it. Britain, in fact, runs by far the greater risks in naval warfare, and has proportional need for armaments. German supplies of both food and war material could in war be mainly land-borne. But of course submission to such restriction would in itself be a hardship which no strong nation would willingly undergo.

Yet, great as is the danger entailed upon herself by the principle of booty in naval warfare, Britain, singularly enough, has been of all the naval Powers the one which has most constantly and stiffly resisted every proposal to give up the theory and the practice. It is difficult to see in this persistence anything better than official adhesion to a tradition which begins in the old anti-Dutch claim of England to supremacy in the Channel. In the Napoleonic period England claimed further to capture not only all goods under the enemy's flag, but enemy's goods under a neutral flag; and the war with the United States in 1812 originated in her claim to search another Power's ships for deserters. By the Treaty of Paris, 1857, these claims were reduced to

the extent of respecting neutral flags as regards all save contraband of war; but the appeals of other nations, dating from the joint action of Prussia and the United States in 1785, for entire abandonment of booty-seeking in naval war have down till the other day been steadily repelled by our diplomatists.

That our officials have been inspired rather by a tradition than by calculation is suggested by the fact that, despite British naval superiority in the seventeenth and eighteenth centuries, Britain's losses in maritime commerce were usually far heavier than those of her opponents. English writers sometimes accuse Frenchmen of omitting to mention French defeats in their school histories. However that may be, British school-books are at least as sedulously silent upon the wholesale captures of British commerce by French and other privateers in the naval wars of the last two centuries. Duruy tells his readers faithfully enough of the destruction of French fleets and commerce by the English in the Seven Years' War; but he could also tell how the privateers of Dunkirk alone, in the war which ended at the Peace of Ryswick (1697), captured Dutch and English prizes which they sold for twenty-two million livres (francs); and in the next war thirty millions' worth; the enemy's loss being calculable at twice or

thrice the town's profit. He might have added that even in the Seven Years' War, where we had all the naval glory, we had by far the heavier bill of losses. And he could and did further tell how, in the Revolution wars, at the end of 1793 the French privateers had captured 410 English ships against 316 lost by France; though he does not add that they took on an average about 500 in every year from 1804 to 1813 inclusive. It would be hard to find mention of these facts in English school-books. Yet they are not disputed; and the generalisation holds good for many years of war.

It is needless to ask whether larger fleets and modern developments could avert the repetition of such losses in a new naval war. Some of our authorities are convinced that no enemy could now do much harm to our naval commerce, for lack of facilities for putting away prizes. On this question the "experts," as usual, are hopelessly at variance. One school, oblivious of the whole technique of their own vocation, tell us how in certain seas an enemy could take our merchant ships by the score (securing them, apparently, without manning them, or else destroying them and their crews in defiance of all international law and practice); while Mr. Bowles confidently assures us that "to close the sea around and adjacent to the British Isles so as to prevent access to them is a

task impossible to perform."[1] On this view, most of our Navy League propaganda is vain scare-mongering. On any view the fact remains that the necessity of defending our commerce, and above all our food supplies, imposes on us an immense and ever-increasing burden; and that this burden might in large part be removed by the surrender of a claim which we have hitherto maintained against all appeals. The crucial question is, Have we anything to gain from the maintenance that can be plausibly set against the risks and the cost of it?

The grounds upon which our Ministers have hitherto defended it and held by it are briefly these:—(1) That we, as a naval Power, can only by naval means bring to a conclusion a war with any Great Power; and that if we abandon the right of booty we could never force to a finish any naval war at all. In that case we should be undergoing the hardship of an indefinitely prolonged "state of war" in which there was no fighting, since the enemy could keep all his warships in port at his own convenience. (2) Apart from booty, the seizure of an enemy's mercantile marine is the only way of interdicting to him the free use of the ocean highway. On both grounds, then, we as a naval Power must refuse to let the code

[1] "Sea Law and Sea Power," 1910, p. 34.

of land warfare be applied to war at sea. On this view, it is implied, it is worth our while to bear an immense and ever-increasing burden of outlay in order to have the power of bringing quickly to terms an eventual antagonist, the alternative being the "inconvenience" of a war without any fighting.

It is difficult to take quite seriously such a plea. In the terms of the case, neither combatant would be suffering any loss or molestation, since our commerce would be as immune as the enemy's; and, the war being purely a naval one, our fleets would have nothing to do but guard our shores from a possible sally. (If the war were not purely naval, the plea falls, for in that case naval operations could not suffice to conclude it.) Such a "state of war" is hardly a contingency worth guarding against by a vast expenditure. But, as it happens, the official British plea no longer stands in the way of an understanding as to reciprocal restraint of armaments. Within the past two years, both Sir Edward Grey and Mr. McKenna have intimated that they no longer stand to their negative positions; and that they are ready to consider the appeal for the abandonment of "booty right," provided only that the concession be taken as a basis for an international agreement as to limitation of naval armaments.

Can we be sure that the common-sense of

the nation will stand to this change of policy? There is every reason to believe that it will. The argument that capture of an enemy's commerce is a means of bringing a war to an end was never a good one, and is weaker now than ever. In not a single historical case can it be shown to hold good. The successes of Blake against the Dutch in 1653 did not end that war: Cromwell offered peace on general grounds of policy. The objects of the war with Spain which followed were attained only by the land operations at Dunkirk. Dutch successes against us in 1667 did not force the Treaty of Breda in that year; and Dutch naval successes in 1672 and 1673 did not force the treaty of 1674, of which the motive on the English side was resentment against France. Our naval victory over France at La Hogue in 1692 had no effect on the land war: peace was not made till 1697; and, as before noted, the French privateers looted an immense amount of English commerce. Naval operations counted for nothing in the later war between England and Louis XIV. A high authority has indeed pronounced that the end of the Seven Years' War was brought about by the successes of England at sea; but the chief of these had been won as against France in 1759; and Spain, which was similarly worsted in 1762, gained in the peace of 1763 more territory than she lost.

It is impossible to show that France, financially exhausted by ruinous wars on land, came to terms on the score either of her sea-borne commerce or of the hardship caused by its cessation. The battle of the Nile, in 1798, did not even stop Napoleon's Syrian campaign; and it was the state of affairs in France that forced him home in 1799. The battle of Trafalgar, in 1805, gave Pitt no sense of support when it was followed by Napoleon's triumph at Austerlitz; and to maintain that it "prepared" the final fall of Napoleon is to admit that only land operations forced him to surrender.

Contrary assertions, of course, continue to be made; but they are unsupported by relevant evidence, and will bear no investigation. Mr. Bowles thinks it sufficient to point out (1) that at Bayonne and at Paris about 1813 the price of brown sugar had risen to 6*s*. a pound, and of coffee and tea in a similar proportion, by reason of the stoppage of French sea-borne commerce; and (2) that in 1810 there was immense distress and pauperism in France, in order to prove (3) that it was "by the stoppage of their sea trade and the severing of their sea communications, and by the terrible distresses thus caused, that Napoleon's allies were detached from him one after the other, and he himself finally reduced to submission." Mr. Bowles's eloquence cannot conceal from

any thoughtful reader the complete fallacy of his entire argument. Most of what he says of the state of France in 1810 — much pauperism, much land out of cultivation, fields cultivated by women, commerce at an end, enormous prices—had been said of it in 1802, after the Peace of Amiens.[1] In that year the English traveller found the French people "sick of the very name of war"; but that did not prevent its resumption. Mr. H. W. Wilson, surveying the whole question of the "Command of the Sea: 1803—15," sums up against the theory of conquest by arrest of sea-borne commerce. "Metternich in 1810 speaks of the French people as 'ruined by the entire destruction of their commerce'; but this was an exaggeration, as France enjoyed internal prosperity and a considerable export trade by land. Between 1802 (a year of peace) and 1811, when the Continental System was at its height, French exports increased slightly, while British exports declined."[2] Even as regards sugar, the beetroot process was well on the way to success in 1812; and the low prices of 1811 and 1812 in London were really the results of a great glut and an extreme depression in commerce. Further, there was home-grown chicory then as now.

[1] "France in 1802: Letters of H. Redhead Yorke," edited by J. A. C. Sykes and R. Davey, 1906, pp. 5, 19, 20, 22, 23, 24, 27, 28, 35, 184, 185.

[2] "Camb. Mod. History," Vol. ix., "Napoleon," p. 242.

It is true that, on the other hand, "the allies of France suffered lamentably" from Napoleon's suppression of their commerce under the Continental system; but to say that it was this that detached them from him and so overthrew him is pure mystification. In the first place, it was not the supremacy of Britain at sea that distressed the allies, but the retaliatory system of Napoleon. Napoleon's allies were so under compulsion. Already in 1802 their resentment of the burdens he had laid upon them was such as to help to move him to make the Peace of Amiens; and even then the terms of peace were so favourable to France as to turn the first British joy over the peace news into indignation. "The treaty was far more advantageous to France than to England." Prussia, coerced into the commercial blockade in 1806, immediately revolted to the British side, was promptly beaten down by Napoleon, and, together with Russia, made the Peace of Tilsit in 1807, losing in territory and population vastly more prestige than she could have lost by stoppage of trade.

The ruin of Napoleon, by his own account, began with his fatal intervention in Spain in 1808, an act sufficient to "detach" any allies who lacked other inducement. Austria at once attacked him anew, counting on the effect of the absence of his best troops, and was once more beaten; and still Prussia and

Russia lay still. Holland, indeed, suffered so much by the stoppage of trade that she systematically took to smuggling; and King Louis, when definitely commanded by his brother to stop it, abdicated; whereupon Napoleon annexed the kingdom, and the smuggling was driven further east. It is true that Napoleon's refusal in 1810 to let Russia trade with the United States helped to detach Alexander from him; but the effect was clearly produced rather by the political tyranny than by the commercial hardship; and when the quarrel broke out in 1812, Napoleon, passing through Dresden, found the monarchs of Austria, Prussia, Bavaria, and Saxony, all assembled to do him homage. Plainly, the signal for the final coalitions against him was the crushing disaster of his Russian campaign. Upon the stupendous losses of that enterprise followed the further ruinous losses of the terrific German wars of 1813. Two great armies had been in two years devoured by famine, capture, and slaughter; what were left of valid troops were pent in fortresses; and even after that the mighty captain could achieve, with raw levies, the wonderful campaign of France in 1814. He finally fell because France was drained of fighting men, and surrounded by a vast coalition with six times her resources. To say, in the face of all this, that what ruined him was the high prices of certain goods set

up in France and among his "allies" by the British command of the sea, is to suggest the politics of *opéra bouffe*.

This theory of military causation, oddly enough, is held by Mr. Bowles in conjunction with the conviction that wars will never cease. We are asked by him to accept the two-fold conception that wars will always occur from time to time, but may always be stopped by making coffee and sugar enormously dear for one of the belligerents. So sanguine can your pessimist be of the suasive powers of his own policy. It is all of a piece with the simple logical circle in which the militarist mind loves to revolve: "(1) Wars are inevitable; (2) If you repine at the cost of armaments, remember that large expenditure on these is the way to prevent wars; (3) Ergo, by spending money enough to prepare for inevitable wars you avert war altogether; (4) So we must conclude that war is inevitable." The political philosophers who propound these pleasing formulas, and who rely on the psycho-politico-economic doctrine of Mr. Bowles about coercion through dear sugar, must try to realise that they really do not dispose of common-sense criticism, or validate their own vast assumptions, by calling their opponents, as does he, "excellent," "humane," and "respectable." These withering epithets recoil upon the naïve

psychologist who uses them ; for Mr. Bowles is strictly respectable, scrupulously humane, and doubtless "excellent," whatever the latter term may mean. What he lacks is plausibility. His argument about dear sugar and coffee is fitted chiefly to add to the gaiety of continental nations, who now make their own sugar from beetroot, are well inured (by tariffs) to "coffee substitutes," and are vastly less dependent on imported food and raw materials than we.

In the twentieth century, obviously, Britain could not hope to force any first-rate European Power to come to terms by mere naval successes. Continental importers of food and raw material could import them over land, through neighbour States; and whatever might be the inconvenience of that, it would be much less to-day, with modern railway developments, than it was a hundred or more years ago. The "force-to-a-finish" formula, in short, is now practically abandoned by English statesmen because it is seen to be invalid. The question comes to be whether the Powers which in the past have demanded the abolition of booty-right will, now that we are ready to accede, be ready on their side to come to the agreement which should naturally coincide—to restrict their naval armaments on a reciprocal plan. Italy and the United States have reciprocally renounced booty-right since 1871 ; but that

treaty cannot affect the armaments even of the Powers concerned, since other nations do not copy it. It is in seeking to bring about a general international agreement, or even one between the two principal naval Powers in Europe, that we realise the full extent of the harm done by past British persistence in the old claim.

In the face of that claim, step for step with the modern expansion of world-commerce, there has grown up a vast aggregate of war-fleets, the construction and maintenance of which constitute vested interests with immense influence. A halt which could have been made with comparatively little difficulty thirty years ago is now extremely difficult, because of the mere acquired momentum of expenditure. Were the nations invited to-morrow by their Governments to agree to a concerted restriction of naval armaments, all the sinister interests concerned would resist. The general line of argument would be—will be, when the question comes to the front—that "the other" Power is laying a trap. Since Britain must still maintain the larger fleet, German expansionists will argue that she is merely throwing Germany off her guard, intending to resume booty-right as soon as an opportunity for war occurs. In Britain, as it is, the common answer to proposals for the abandonment of booty-right is that "in

war such a treaty will not be respected." Many Germans will naturally reason in the same fashion.

Now, this objection would obviously be valid as against a proposal that any country should singly begin to curtail its armaments after a general agreement to give up capture of commerce. But it has no validity whatever against a proportional restriction following on such an agreement. Supposing any two or more naval Powers to make such a conditional treaty, and war to follow among them after they had acted upon it, any breach by one of the compact to abandon capture of commerce would release its antagonists, and no one would be any worse off than before. Nothing would have been lost; and even if all returned to the ancient practice of plunder, they would in the interim have been saved much expenditure while remaining relatively as strong as formerly. If, then, the British Government should succeed in effecting the kind of agreement called for, the abandonment of booty-right as a preliminary creates no new danger, and means no loss of relative power of defence. The essential thing is that the abandonment of booty-right should be made the starting-point, inasmuch as it places before all Powers alike a rational motive for restriction. A Germany with no fears for her sea-borne commerce has no need for a burden-

some naval programme: a Britain similarly freed from apprehension can have done with panics, provided only that she maintains a sufficient coast defence. Let but the first step be taken by the two Powers in concert, and there is no limit to the possible advance. For it may be taken as certain that all the naval Powers would follow suit. The United States, having least ocean-going commerce, might be supposed to have least interest in the reform; but her statesmen have always been the foremost advocates of it, and they would certainly not now turn back.

It is not unlikely to be objected that, inasmuch as the abolition of booty-right on land by the Declaration of Paris was not followed by a restriction of land armaments, a similar abolition in the case of naval warfare may not be permanently followed by restraint of naval armaments. But the two problems are fundamentally different. Armies are maintained not merely to preserve property but to *keep out* a foreign Power: invasion is the supreme political evil, whether or not it be followed by loss of territory. European States, mindful of such experiences, remain armed to prevent them. But the simple concerted removal of the risk of capture of commerce at sea at once removes the motive for the bulk of the naval armaments of the world. No one can now hope to

gain or recover territory by mere naval operations. Of all military expenditures, that on navies is thus for most States the most gratuitous; yet it goes on increasing in the face of a growing disposition on all hands to live neighbourly. For this anomaly the cause is to be found precisely in the principle of booty-right, which sets maritime States on building war ships in proportion to the increase in their mercantile marine. Given the abandonment of booty-right, all alike have every motive to retrench, provided only that all retrench in proportion; and if no State holds out as Britain has done in the past, a concert is simply a matter of patient negotiation.

On the other hand, the experience of Europe as regards the abandonment of booty-right in land warfare is all in favour of the proposal to abandon it at sea. Plunder *has* been systematically abandoned in land warfare. Foraging and furniture-burning are apparently inseparable from war; but when the Germans entered Paris they looted nothing, though they gazed upon much of the loot taken by Napoleon from Italy. There is thus the best of reason for believing that if once the agreement be come to in naval matters that was come to for land warfare in 1857, it will be respected. It will be to nobody's interest to break it. The very risk of loss of commerce is one of the

main dangers to peace, inasmuch as the armaments to prevent it are a constant strain on tempers all round. Let us suppose, say, that Germany were tempted to intercept British food imports in order to have Britain at her mercy. She would then instantly bring the whole naval power of Britain on her ports to the end of destroying them and the whole of her commerce. Only in concert with her neighbours could she count upon getting her own food imports and raw materials by land; and a policy of gross aggression would put her in jeopardy. On her part, she could be sure of such a concert if she were not the aggressor; and in that case nothing that Britain could do to her commerce would be sufficient to force her to an ignominious peace.

But we tend to darken counsel by putting such hypotheses. Neither State is rationally to be supposed desirous of aggression upon the other. On both sides the imputation of such desire is the contribution of the fools to the problem. What stimulates the naval armaments of both is the *apprehension* set up by the nature of the subsisting law of nations as to sea-borne commerce in war. If we could but fight the sorcery of mutual distrust with the arms of rational agreement, all the fears of the past generation might pass away like a nightmare.

It has been complained on the British side

that British proposals for the consideration of proportional restriction of armaments have been rejected by Germany in recent years. But that only brings us once more to the stumbling-block of booty-right. Let the Englishman try to put himself in the German's place. So long as Britain avows her determination to capture an enemy's commerce in naval war, Germany has no more motive to restrict her navy as against us than to restrict her army as against France. The more her commerce grows, the greater her risk, and the greater, therefore, the need to protect it. Only when Britain offers the formerly denied concession as to capture of commerce can she regard German refusal to discuss restriction as unfriendly in spirit. Even if such a refusal should still come, it would be much more likely to be inspired by the sinister interests which, in Germany as in Britain, desire armaments for the profits and livelihoods they yield, than by any general ill will. But not until there is an express conjoining of the principle of proportional restriction with that of "no booty in naval war" will any rational imputation of hostility be even superficially plausible on the score of refusal to discuss.

I take it to be a primary philosophic truth that no criticism of one nation by members of another rises above the level of tribal

jealousy until it is recognised that the only valid criticism of the kind is that which assumes *community of character*. We are entitled to criticise the conduct or the institutions of another nation precisely so far as we appeal to principles by which we criticise conduct or institutions in our own nation and our own countrymen—so far and no farther. And if we ever assume in another nation a bad total bias of character which we do not assume in our own, we are merely airing passion and prejudice. In acting on such an assumption there is nothing scientific. If the assumption were sincere, there would, in the terms of the case, be no use whatever in stating it: it would be merely an utterance of vituperation, not expected or intended to have any good result. To suppose that the statement could have any persuasive influence on the nation disparaged would be to suppose that that nation has *not* the bias of character assumed —which is a contradiction in terms. In short, the clearest teaching of moral philosophy, no less than the simple common-sense of ordinary human intercourse, dictates that in international intercourse—which always has existed, and must continue —community of moral principles shall be taken for granted.

It is doubtless true that individual leaders remain capable of conduct which does not

come under this rule. After the most careful study, Napoleon must be pronounced responsible for the wilful rupture of the Peace of Amiens. This does not alter the fact of the British responsibility for the previous wars; but the fact remains that a British Cabinet could learn moral and political wisdom where the military autocrat could not. Napoleon remained unalterably a conqueror, an aggressor; so much is now fully and convincingly set forth on the French side. But in European politics to-day there is no Napoleon, and no likelihood of one. If one did arise, Europe would doubtless have to revert to the old methods; but the bare possibility is no reason for assuming that any constitutionally governed State is now to be regarded as a Napoleon incarnate. Even Bismarck effectually learned the lesson of Napoleon's fall, and refused to emulate his policy. Those British alarmists, then, who proceed on the assumption of a total "German" bias to Napoleonic methods do but idly invite German recrimination. When they give their reasons, they break down utterly. When Mr. Bowles goes about to show (work cited, p. 118) that "so far as Germany is concerned," military reasons will in time of war "override all other reasons whatever," including treaties, he cites official language which conveys the exact contrary of what he reads into it. The

German declaration which he quotes is an express reminder that in war civilised powers may be expected to do *more* in the way of *humanity* than they are bound by treaty to do, not that they hold themselves free to do less. Mr. Bowles would make out Germans in general to be even more fools than knaves —fools enough to avow their intention of knavery. Serious political discussion must rise above such dialectic as this.

That is to say, reason compels us to believe that there is no more aggressive design on the part of Germany or any other country towards Britain than on the part of Britain towards Germany or any other country; and on such a basis rational politicians of all countries are in reason bound to seek a practical agreement which will concurrently, however gradually, liberate all alike from the penalties of mutual distrust. The issues are clear. Britain, necessarily relying mainly on her ships to guard her from invasion, keeps up a great navy, and clings to that right of capture which makes a navy more powerful for destruction in war. Germany and other Powers, bent on guarding their commerce, defensively create navies in which Britons see possible instruments of invasion. Britain does not want a naval war; the other Powers do not want to invade her: yet each forces the other to spend enormously on defence,

thus causing social injury all round, and this in an increasing degree.

To the rational course of ending the evil by agreement there remain certain fallacious objections. Some men argue forensically that if naval wars are made comparatively harmless to commerce they will be more readily resorted to. This argument also has been used by the same officials who reason that surrender of booty-right will lead to the indefinite prolongation of the state of war. Putting the two contentions together, we have this: that where there is no fear of capture of commerce—a loss falling on individuals—the nations will lightly enter on quarrels which mean risking the extremely rapid destruction of fleets costing many millions, the loss of which will fall upon the nation as such. As soon, however, as they have begun the war, the less powerful navy will go into its own harbours, there to remain indefinitely, until it sees some chance either of *invading* the enemy or of taking his ships by surprise in the event of *his* not using the same precautions. As invasion presupposes command of the intervening seas, the chances of *that* operation would seem to be small; and if, as has been premised, the nations will be recklessly ready to fight when commerce is safe, the course of going into harbour to avoid fighting reduces the theorem to absurdity. It is in

truth a fantastic thesis, imputing to all nations worse folly than they have committed. Foolish as they have ever been in the matter of war, wars are after all made for a purpose. Since wars of religion have become impossible, wars have been made (as apart from civil wars) for territory, or for "markets," or for the purpose of making or preventing some change in the "balance of power," so called. Now, taking all the possibilities in turn, it will be found to be impossible to maintain that the abolition of the right of capture of commerce at sea would increase the likelihood of a war upon any one of the pretexts mentioned. On the contrary, such abolition would remove one of the possible motives for a war—the stupid desire to injure the commerce of a rival.

Some amateurs of war, I understand, consider it irrational to propose to do anything which would tend to make war less destructive. It would make war ridiculous, they argue, to hedge it round with restrictions to prevent damage; and the abolition of the capture of sea-borne commerce would make a naval war especially absurd. I fear I could not quash this argument; for it is my own opinion that war in one way or another is always absurd. But, if we must have absurdities, let them be of a kind that involves the minimum of suffering and destruction. Those who detest absurdity will then have

a new reason for avoiding war altogether. Already, in fact, restrictions have been and are constantly being put upon the operations of war. Commerce is already immune in land wars; and all manner of limitations are laid down as to modes of killing.

Some idealists have in the past objected to all such steps—in the spirit of the argument before dealt with—that to limit the horrors of war is to increase the likelihood of war. John Stuart Mill so reasoned. But this is an *à priori* fallacy, proceeding upon inadequate premises. In the first place, the stage of human evolution in which war is most savagely cruel is precisely that in which war is most common. In the second place, Mill's argument takes no account of actual psychology. On his view, the only way to stop war would be to carry it to the worst degree of atrocity, in order to make all men recoil from it. But this would mean a transition from the very worst form of war to that of absolute peace without a passing through any intermediate stage, a process which is psychologically unthinkable. It is true that at certain stages of human history the evils of war have ostensibly made men grow weary of certain provocations to war. The old wars of religion in France and Germany did ultimately make men give up wars of religion. But they did not also give up national and commercial wars upon other

pretexts; and the atrocity of the religious wars, while it brought such wars into discredit, was in itself profoundly demoralising. Finally, it is quite impossible that nations should *plan* to evolve themselves into a state of permanent peace by making war as savagely as possible. In a word, all evolution is by steps, and to abolish the capture of commerce at sea is a step towards the minimising of all war. Given the abolition of one more barbarism, men, being *pro tanto* less barbarous, will be not more but less ready to go to war upon any pretext whatever.

By this time, happily, Governments have passed the stage of desiring either war for war's sake or savagery for the sake of keeping war more warlike, whatever may be the formulas traded on by those who still sing "the song of the sword." The Governments have made and kept agreements which aim at reducing war from the primeval scramble of sheer greed and passion to a grimly ordered trial of strength, by way of "last arbitrament" in their disputes. It is now open to them to take further and more fruitful steps in the same direction, and so haply, by a sane agreement as to war at sea, to open a new chapter in the history of the evolution towards the prevention of war on land. It is only by successive and measured steps that the desired goal will ever be reached. Those who call for instant and

complete transformation of human motive, character, and conduct, are vain guides, whatever be their standing ground. But far worse guides are those who meet every plan for a single step by elaborate demonstration that any single step towards better life means ruin. In the words of the Psalmist, misquoted by one of them to recommend his own doctrine of unalterable distrust: "I am for peace, but when I speak they are for war." In so far as our own Government is at present promoting the forward movement by agreeing to International Prize Courts, it is deserving of all support. National Prize Courts are the negation of the judicial principle: they make a litigant judge in his own cause. If there must be prize courts, let them be International, with some power to develop international jurisprudence. By conceding such courts, we take a step on the way to giving up capture of commerce altogether, inasmuch as we improve the relations and extend the reciprocities of States. If further we abandon altogether the principle of contraband of war as regards neutrals, we are minimising the difficulty as to defining contraband of war as between belligerents. If neutrals are left free to carry anything whatever—barring troops—it is we who will gain most, for we do most importing of supplies which may subserve war; and when neutrals are free to carry what they will, the

commerce of belligerents is far on the way to equal immunity. The principle of blockade will in that case disappear; and naval armaments will become solely a matter of possible invasion and the necessary defence. Who, in that case, has more to gain than we? Whom do we dream of invading? What Power fears to be invaded by us? And who, given immunity of commerce, is likely to rebuild a formidable fleet solely on the chance of invading us? Let every conceivable contingency be faced, and the sanity of the abandonment of booty-right, with proportional restriction of armaments, becomes the more clear.

Whatever may be the immediate course of the question, Dr. Wehberg has rendered a service to civilisation in setting forth the situation as he has done, with scholarly exactitude and perfect sobriety. English readers now have the means at hand of thinking out the political problem. Only one as expert as himself in the *technique* of international law could pretend to criticise his exposition of it. As a non-expert I can but say that no work of the kind had made on me a stronger impression at once of special competence, mental discipline, and serious recognition of the great human issues involved.

JOHN M. ROBERTSON.

January, 1911.

CAPTURE IN WAR ON LAND AND SEA.

CHAPTER I.

HISTORICAL REVIEW — FIRST PRINCIPLES OF LAW OF PRIZE ON SEA AND LAND.

THE right of appropriating an enemy's property for the express purpose of enriching oneself,[1]— the right of booty so called—has been from time immemorial a practical and exceptionally important part of the laws of war. We find it in the crudest form, in the carrying out of a war of extermination even in the classical times of Greece, while the Romans in their striving after the lordship of the world paid more heed to the sparing of their future subjects. In the Middle Ages practice held firmly to the old rude principles, as did in theory Hugo Grotius and his pupils also.[2] Only, roughly, since Justinus Gentilis, who in 1690 published a

[1] That the intention to enrich oneself forms part of the conception of the law of booty is to-day a universally prevalent view.

[2] For a more detailed historical account of the law of booty I refer the reader to the work of Bluntschli.

bold thesis, " Dissertatio de eo quod in bello licet," and since the coming in France of the Abbé de Mably, have more humane principles been able to find acceptance among the nations. When, soon afterwards, the axiom which laid the foundation of modern laws of war had been admitted, viz., that war is carried on only between States to the exclusion of the entire peaceful population,[1] we see from the end of the eighteenth century one step forward after another in the domain of the law of booty. Let us next mention the Treaty of 1785 between Prussia and North America, by which both States insured the inviolability of private property in case of war. Although this treaty was indirectly revoked in 1799,[2] at any rate two important States had displayed their honest intention to show more regard to the desire of the nations for the ending of the old horrors of war. Later on this example found laudable imitation in the treaties between Brazil and Uruguay (1851), Costa Rica and New Grenada (1856), the United States and Bolivia, (1858), Prussia, Austria and Italy (1866), and Italy and North America (1872). Moreover, Italy in its *Codice per la Marina Mercantile* of June 21st, 1865 renounced the right of prize at sea, taking it for granted this would be mutual. The Brussels Conference of 1874, for the first time, established the principle of the inviolability of private property,

[1] The contrary and untenable point of view is still upheld in Lentner, " Das Recht im Kriege," 1880, p. 118.

[2] According to the opinion of v. Bar (" Die Nation," 1906, p. 134), the treaty as far as regards prize at sea is still valid.

which in practice had long since been recognised, notably in the campaign of 1870-71. True, the Treaty of Brussels was not ratified by the Powers, and it was not until the first Peace Conference at the Hague that the idea of abandoning the right of booty in war on land received unanimous acceptance by the States represented there. Even before that the law of prize at sea had, in the Paris Manifesto of April 16th, 1856, been subjected to an exceptionally important reform. For the future neither an enemy's property could be taken under a neutral flag, nor neutral property under a hostile flag from the enemy, and only warships, not privateers, were entitled to seize an enemy's goods under a hostile flag. The second Peace Conference at the Hague in 1907, and the London Conference on Naval Warfare also determined some, though certainly less important, items of the law of prize both by land and sea, according to international jurisprudence.

Thus, then, at the first Hague Conference, the distinguished Swiss Colonel Künzli, lately deceased, might well ascribe[1] to the nineteenth century the glory of having furthered the progress of the laws of war as no other epoch had done. And certainly it is an admirable development, that to-day the complete destruction of the enemy is no longer accounted the object of war, but only his humbling in as brief a time as possible with the least possible cost of life and property. All attacks on the private or

[1] Meurer, "Kriegsrecht," p. 19.

public property of the opponent merely for the sake of enriching oneself are thereby prohibited, and are only sanctioned on grounds that are inseparably bound up with the nature of war. It follows from this that nowadays the right of booty—leaving out of the question for the moment the familiar exception of the law of maritime war—no longer exists at all, a view that has been expressed in the most pointed fashion, particularly by Bluntschli,[1] Lueder,[2] and A. Zorn.[3]

What I have grouped together in this treatise under the heading "The Law of Booty in War on Land" is therefore only an enumeration of the exceptional cases in which the law of nations sanctions the violation of private or public property.

Two principles of the law of war of pre-eminent consequence must here be defined and kept separate.

The principle of military necessity or reasons of war is now generally accepted. It signifies, according to Meurer,[4] "that a violation of the laws of war must be regarded as not having taken place if the military operation is necessary for the preservation of the troops or the averting of a danger that threatens them and cannot be averted in any other way, or even is advantageous either for the effectual carrying out of a military enterprise not inadmissible in itself, or the securing of its success."

[1] "Das Beuterecht," pp. 5, 60, 73.
[2] H. H. IV., p. 489.
[3] "D. Kriegsrecht zu Lande," p. 244.
[4] *Ibid.*, p. 14.

To military necessity every other rule of war must give way, as for instance, even the principle of the inviolability of private property. Granted that the premisses of the *nécessités militaires* obtain, all, even the most extreme, measures are allowed.

In considering the legal status of private and public property, a second maxim is of particular importance, which, although practically ignored by writers on the subject, must be unconditionally invoked in establishing the great difference in the treatment of private and public property. I mean the maxim "War sustains war." Each State naturally tries as far as possible to throw upon its adversary the heavy expenses which every war entails, and therefore either party takes possession of the war funds and other belongings of its enemy, even although the captor has at his own disposal, derived from his own country, all the requisite means.

Taking into account the tremendous sums which in these days a war swallows up, it stands to reason that the appropriation of the ready money of a hostile State can be normally justified thereby. That the maxim, "War must sustain war," still holds good to-day, the Hague negociations in particular decisively proved. The German Colonel v. Schwarzhoff[1] declared at the time that the principle was recognised by all the great armies of Europe, and there was no hope of wholly eliminating it.

[1] Prot. p. 281. He applied the maxim wrongly, for requisitions and contributions are not based upon it, but on military necessity.

In vain did the smaller States, notably Belgium, Holland and Siam, endeavour to contest this. (To quote Beernaert's words, "It would be a sorry progress.") The result of the debates left no doubt remaining as to the retention of that rule of warfare. The application of the maxim, it is true, finds its special justification also in the fact that by it the resistance of the enemy is simultaneously weakened, seeing that you take from him the sinews of war. Yet one must dwell on this point, that the said reason alone could never justify the total transfer of property. With the conclusion of the war every object of the deprivation would in that case be removed and restoration must logically ensue. But since this does not take place we must adhere to the declaration that the State means, first and foremost, to cover its expenses in war with the means of its opponent. If we were to regard as the decisive ground of the seizure of movable public property the intention of making impossible for the enemy the use of the objects conducive to war, the absence of obligation to restore them would be a state of things falling under the old conception of booty. Nothing else would justify the retention of those objects after peace was made. But as we no longer recognise the idea of booty, in spite of the contrary view of Bonfils,[1] Geffcken,[2] and Meurer,[3] this conception must be rejected.

[1] *Ibid.*, p. 625.

[2] Heffter, "Das Europ. Völkerrecht," revised by Geffcken, p. 282.

[3] *Ibid.*, p. 315.

If the fundamental idea of modern warfare just insisted upon is so little emphasised in literature, this is due to the fact that authors are of opinion that the circumstance that States desire to carry on their wars as far as may be with the means of their opponents is explained sufficiently by military necessity. This point of view is false because it misinterprets the meaning of the law of necessity in war. As regards military necessity it can only be a question of exceptional cases of necessity and unwontedness. This view is shared not only by two distinguished writers, Lueder[1] and Meurer,[2] but by men of such unusual practical intelligence as the compilers of the German General Staff's pamphlet on "The Usage of War on Land."[3] If requisitions and contributions are imposed, one may, doubtless, cite urgent necessity, but by no means so where the property of the hostile State is merely seized in order to cover one's own expenses. For in how many cases has the belligerent State more than enough warlike resources of its own? Hence, the two maxims, "Military necessity" and "War sustains war," have a wholly different and independent subject, and the one by no means includes the other. It must, however, be conceded that in many cases both principles apply together, *e.g.* when the invading foe is bereft of his own resources and he only takes

[1] H. H. IV., p. 255.
[2] *Ibid.*, p. 14.
[3] Berlin, 1902, p. 16.

his adversary's property in order that he himself may be able to carry on the war at all.

If we wish, to start with, to deduce from these maxims the position of private property, the rule "War supports war" can have no application as regards such private property, because war, according to the present view, only creates legal relations between the States to the exclusion of the peaceful population. Only by seizure of the property of the hostile State, not of the property of its peaceful citizens, can the invading enemy procure his sinews of war, and even the private belongings of the enemy's soldiers are inviolable. Where, from reasons of military necessity, a breach of this principle occurs, the necessity of compensation invariably arises. Art. 46, Sect. 2, of the Code,[1] lays down "Private property may not be confiscated."[2] In the logical carrying out of this principle the article, introduced in 1907 at German suggestion (23 in the Code), declares "The abrogation or temporary invalidation of the rights and claims of adherents of the opposite party or the exclusion of their right of complaint is forbidden."[3]

The treatment of public property on the other hand is wholly governed by the two maxims above recited. As a matter of fact, it seldom happens

[1] Throughout this book in referring to "Compacts Concerning the Laws and Usages of War on Land," 1907, I use the abbreviation "Military Code."

[2] Sect. 1 of this article is to the same effect.

[3] Cf. Prot. III., pp. 111, 112, 131, 141.

that public property, whether in consequence of military necessity or the desire to cover the expenses of war, is confiscated and yet remains untouched. Some exceptions, however, occur even here. By Art. 56 of the Code institutions devoted to instruction, art and science, public worship and charity, are exempt from all embargo, because their usefulness in the conduct of war is far too slight compared with the damage done to the service of mankind. As, moreover, railways and other means of transport are of extreme importance to international commerce and intercourse, the obligation has been set up that they must be restored even when they are public property. But in that case no compensation takes place on the conclusion of peace, in contradistinction to private lines and the like.[1]

This systematising forms a contradistinction to the course of ideas prescribed by A. Zorn.[2] His opinion is as follows: he starts quite simply from the principle of military necessity and subjects to that rule private and public property alike. The other maxim he leaves quite out of account. His words are: "The treatment of private and public property belonging to the enemy is governed, as are all the other modern laws of war, primarily by the principle that every course of conduct of whatsoever kind must find its justification as an act of military necessity." With this maxim Zorn takes issue with

[1] As to immovables, see Chap. II.

[2] P. 243. V. Ullmann, "Law of Nations," p. 496, is also wrong.

the conclusions of the Code of 1907, or rather 1899. The seizure of public property need by no means be the outcome of military necessity. Let us take, for instance, the following case: The capital of an enemy's country, as well as all its environs, are occupied by an invader, who is vastly superior and has command of exceptionally large resources in ready money, in such a manner as to offer no prospect of their recapture. Here, according to Zorn's conception, the ready money forthcoming in the enemy's capital may not be taken, for military necessity does not demand such seizure. The invader can carry on the war without the money and his opponent has simply no prospect of obtaining possession of such moneys and utilising them for war purposes before peace is concluded. Were people at the Hague really of opinion that in such a case a seizure should be prohibited? I believe this all the less because Art. 53, sect. 1, of the Code by no means presupposes a military necessity for the seizure, but lays down that all public property may be seized "which is of a nature to subserve the enterprises of war."

The logical carrying out of Zorn's principle shows that this difference of opinion is not merely a dispute as to terms. If public property were inviolable, wherever military necessity allows it to be so, the radical difference between it and private property would exist only on paper. We should then have to start with the principle of the inviolability of private property, and, in addition, a series

of exceptions in case of military necessity, and, after that, the principle of the violability of public property and the sacro-sanctity of the same in cases where military necessity does not enforce it. One would start in the one proposition with the violability, in the other with the sacro-sanctity, and yet would arrive, by formulating exceptions, at the same conclusion in both cases. Only the burden of proof would be reversed. If the enemy violated private property, he would have to show that the seizure had taken place on considerations of military necessity. If, on the other hand, he violated the property of the hostile State, then the said State would have to show that no such necessity was present. In contrast to this, we must point to the fact that in practice the treatment of private and public property is quite different. For instance, the ready money of the hostile State can be laid hands on by the invader, but not that of private individuals. But if we accept the premisses, private property is inviolable (exception: military necessity); public property is violable (exception: where military necessity does not demand seizure), we should have, in order to get, on the strength of the theory, a conclusion consonant with practice, to take a stricter view of necessity in the case of private than in the case of public property. As to the former one would have to say "The seizure of ready money does not fall under the conception of military necessity"; in the case of public property, on the contrary, "That necessity allows the seizure

of ready money." Yet no one will deny that this view is untenable. Thus, if Art. 23 says: "It is forbidden to destroy or seize an enemy's property, except in cases where either is demanded by the necessities of war," the wording of that article must be declared incorrect, particularly in regard to the contradiction which otherwise exists with Art. 53, sect. 1, of the Code.

The incorrect formulation of the fundamental conceptions by A. Zorn has not prevented his fully adhering in particular points to the resolutions adopted at the Hague. He also agrees with me[1] in rejecting the theory of Stein, which would subject to confiscation all that is material of war, and in so doing draws no distinction between private and public property—an untenable view, which Röpcke[2] has recently tried to bring into currency. Doubtless Röpcke's idea is very humane in wishing to have public property as well guarded as private, but here we must be guided by the Code alone. Perhaps the further development of the laws of war will result in people's contenting themselves with crippling the enemy and taking possession of his property, and afterwards restoring what they have acquired. We should then arrive at Zorn's notion that all public property must be inviolate, except on grounds of military necessity. But until that theory has found acceptance none but the above train of thought supplies a satisfactory

[1] P. 262.
[2] Cf. p. 11; also Nowacki, p. 64.

solution, or one in accordance with the Hague Convention.

The recent development of the laws of war has led to this improvement, that an individual is justified in any measures against property, no matter whether that of the State or private persons, only on the strength of the order of an authorised person. If he seizes an enemy's chattels without being covered by orders from his superiors, he is punished according to the laws of his country. Sect. 128 of the German Military Penal Code, in which, by-the-bye, the conception of booty is upheld, imposes a penalty of imprisonment not exceeding three years, and subsequent degradation to the second class of military status, on "Whoever in the field detaches himself from his corps without orders, in order to plunder, or of his own motion makes prize of things that in themselves are subject to the law of prize." The second clause of this paragraph punishes whoever keeps to himself booty made according to law. Thus the old rule of Bynkershoek has become valid, *Bello parta cedunt rei publicæ.*

The establishment of the legality of appropriating the property alike of the State and of private persons needs no special legal procedure in war on land.[1] Thus, for instance, as regards English warfare, Wildman[2] testifies that no single instance of

[1] Cf. Ph. Zorn, "D. Fortschritte d. Seekriegsrechtes durch die 2 Haager Friedenskonferenze," p. 181.

[2] Von Holtzendorff; "Rechtslexikon," p. 349.

legal contention as to the legality of such appropriation is known. Even before that Holtzendorff[1] demonstrated that without doubt the illegal seizure of movables, would, on the conclusion of peace, afford sufficient ground for an action to show cause. Recently, Art. 3 of the Convention confirmed the dictum of the Code that the belligerent who violates the rulings of that Code should, under certain circumstances, be bound to make good the damage, and be responsible for all acts committed by persons forming part of the armed force of the party.[2] This proposition, put forward by Germany, was justified by the report of the Austrian Baron Giesl de Gieslingen, as follows[3]:—"The enactments of the Code of Laws and Customs of War being meant to be observed, not only by the commanders of contending armies, but in a general way by all officers, non-commissioned officers and soldiers, the German delegates have thought fit to propose that the Convention should extend to the Law of Nations, in all cases of breaches of the Code, the maxim of Civil Law by which the master is responsible for his managers, or agents."

Hitherto, the contracting powers had, according to Art. 1 of the said Convention, merely been bound to give their field armies instructions corresponding with the Code. If the soldiers or officers transgressed these instructions, they made

[1] "Rechtslexikon."
[2] Cf. Ph. Zorn in "Zeitschrift für Politik" for 1909, p. 334.
[3] Prot. I., p. 103.

themselves liable to punishment by the military laws of their country. On the other hand, there was no obligation on the part of the State. In the commission, a discussion had arisen whether this proposal included not only neutrals, but enemies. For the German proposal had been wrongly understood to mean that only in case of a breach of the agreement as against neutrals would compensation be given. So when the military representative of Germany, General von Gündell,[1] had corrected this erroneous impression, the unanimous acceptance of the above decision at once ensued. They had however, shortened the German scheme by striking out more particular regulations as to the nature of the compensation, in which a difference was made between neutrals and adversaries.[2]

The German scheme demanded that neutrals should be compensated at once, provided that military necessity permitted; on the other hand, the question of the time for the compensation of enemies was to be left to the special stipulations of the treaty of peace. England and France, in particular, would not hear of a privileged position being accorded to neutrals by the treaty.

With regard to the amount of the compensation nothing was said in 1907, nor at the debates on the time of grace and on fishing vessels. But as no agreement was reached with regard to the extent

[1] Prot. III., p. 147, 148.
[2] Cf. further Huber in "Jahrbuch des Oeffenth. Rechts," II., p. 574 *et seq.*

of the indemnity in these instances of the law of naval warfare, the compensation even for infringements of the Code must be estimated by proceedings in equity.

It should also be remarked that in the application of this rule difficulties of many kinds may arise. The necessities of war will often not admit of observing all the regulations. For instance, if in besieging a town a scientific institution be destroyed which, according to the Code, ought to be spared, there can of course be no question of responsibility. What will happen, then, supposing the injured parties, as has been increasingly the case since the Spanish-American war, have insured their property against war-risks even on land?

The above-cited difference between private and public property applies to war not only on land, but at sea. Here public property may be violated, but not private property. But as regards naval warfare there is a very important exception, the so-called right of prize. This, however, does not include all the goods of individuals, but only such as may be included in the enemy's commerce. There is a supposition extant that all goods being conveyed by sea appertain to the enemy's commerce. Yet the proprietor may prove the contrary if he can. The French Instructions of July 25th, 1870, lay down: "You will have to seize all the enemy's merchant ships without distinction." Thus, as a matter of principle, not all private

property of the hostile Power's subjects is violable in naval warfare, but only such as may be held to form part of the commerce of that power's subjects. Thus far the right of prize still holds in naval warfare. True, people justify the seizure of such objects as belong to the enemy's commerce in all cases by the necessity of war, *i.e.*, by a hint that they wish to destroy the enemy's commerce and thus render victory possible or easier. But even granting that by the seizure of hostile merchantmen victory is facilitated, that by no means justifies the transfer of property, seeing that military necessity would only demand a temporary, not a permanent retention of the said merchant ships. Therefore it cannot be denied that in naval warfare belligerents do actually enrich themselves with the private property of their enemies, and thus a right of prize is here again exercised. This is particularly shown by the fact that the prize regulations of all Powers except Germany and North America assign the prize-money to the crews, or at least a reward for the seizure of the vessels. Renault's[1] reason for proposing the "abolition of prize-money" at the Hague in 1907 was to prevent a combatant from enriching himself by the seizure of an enemy's ships. But he could not carry it through. Opponents insisted above all that it was a question of esoteric international law.[2]

[1] Prot. I., p. 248; III., pp. 794, 809. Cf. Austria-Hungary's Amendments on the point, III., p. 1149.
[2] Prot. III., p. 843.

A further contradistinction between sea and land warfare lies in the fact that the lawfulness of appropriating private property must be formally established by legal procedure.[1] The seizing of public property is effected here first, as in land warfare, without any formality.

The duty of compensation for laying embargo on private property of course only exists in naval warfare where the enemy's conduct is contrary to law. Two circumstances are here conceivable: first and foremost, either the seizure is not ratified by the Prize Court, or the release of ship and cargo is brought about by diplomatic means. Then those concerned have, according to Art. 64 of the London Naval Convention, the right to compensation for damage, unless, indeed, adequate reasons for laying embargo on vessel or cargo are forthcoming. Renault's[2] report cites as such, in the first place, "notably the throwing overboard, suppression, or deliberate destruction of all or part of the ship's papers, resulting from the act of the captain, one of the crew, or one of the passengers. A similar case would be where duplicate, false, or falsified papers were found on board, supposing that such an irregularity were connected with circumstances of a kind to affect the seizure of the vessel." In some countries the Prize Courts are not in a position to grant compensation in a case where the release of a ship has resulted from diplomatic

[1] I have not gone further into this in the present work.
[2] *Actes*, p. 374.

action. Then the question of compensation is also settled in a diplomatic way. Where the National Courts are competent, the question of compensation can only be laid before the International Court for decision, when, in accordance with Art. 1 of the "Agreement, touching the setting up of an International Prize Court," it is a question of deciding the legality of the seizure of a merchant ship or its cargo, that is to say when the legal contention is not solely confined to the question of compensation. The decision of the point as to how far the indirect loss must also be considered in determining the damage, is left to the Prize Courts.

Bluntschli[1] declares that there is no primary reason to justify the difference between land and naval warfare as regards the treatment of private property. If the army is forbidden to make spoil of private belongings on land, plunder of a similar kind must not be granted to the navy. Doubtless he is right in so far as in naval warfare private property must likewise be inviolable, and hence the demand must be raised that in cases where necessity of war calls for the seizure of private property, the obligation to restore the same arises, as the Belgian van den Heuvel[2] very rightly insisted in 1907. But the question is, whether in naval warfare, in all cases, the necessity of war entirely excludes the possibility of sparing goods that belong to the opponent's commerce.

[1] P. 147. [2] Prot. III., p. 839.

Since reasons of war must form the guiding principles at sea as well as on land, it may very easily be that sea warfare requires quite different measures. Although the permanent retention of private property at sea can in no way be justified, a reference to the regulations for land warfare by no means refutes the right of temporary seizure at sea, as was erroneously declared in 1907[1] by Choate, Barbosa, Rose and Hammarskjöld. Rather the question arises whether military necessity at sea does not demand at least a temporary embargo on the enemy's private property. It will, however, be shown later that prize at sea can by no means be justified by necessities of war, and thus all defence of that right is proved to be unfounded.

For that matter the seizure of an enemy's property at best would in no wise come under the conception of the right of prize, if it only arises from the necessity of war, *e.g.* to obtain urgently needed requisitions in kind.

The abrogation of the right of prize, therefore, would not forbid all seizure of an enemy's private property at sea, but merely such seizure as of itself only can cause injury to the enemy's commerce. And, in any circumstances, there would then be an obligation to restore private property so seized. Brazil[2] proposed, in 1907, that the rules of the law of booty in land warfare should be extended to

[1] Prot. III., pp. 756, 787, 796, 805. The right view was maintained by Renault, v. Martens and Nelidow; Prot. III., pp. 793, 834, 842.

[2] Prot. III., pp. 787 *et seq.*

the sea. In as far as the originators of the proposal started from the principle that it differed from the American proposal for the total abrogation of prize at sea, they were mistaken. In its material aspects the Brazilian proposal somewhat tallied with the American, and only dwelt, as the latter had not done, on the exceptions obtaining in land warfare as to necessity of war; these are closely bound up with the essence of war, and hence must apply to naval warfare as a matter of course. If, therefore, the American proposal had been carried through, the exceptions on grounds of military necessity would have held good. True, Choate,[1] in defending it, had laid down that the right of blockade should be retained as a *juste équivalent* for the damages to which property was subjected in land warfare owing to the necessities of war. This amounted to saying that Choate wanted to put a stop to all damage to private property in naval warfare, even such as necessity required. But that should have been expressly stated in the American proposal, and could not be accepted in silence. Hence, it is open to question whether the error at the bottom of the Brazilian proposal is not to be ascribed to Choate's speech.

Travers Twiss, at a meeting of the Institute of International Law in 1875, declared himself in favour of an enemy's ships being floating territory, and as such becoming the property of the aggressive State.

[1] Prot. III., p. 756.

Occupation in land warfare, however, constitutes no title to the territory, and thus this final conclusion is false.

Further, Hammann[1] opines that the aggressive State on land can, by virtue of the power acquired, prevent hostile use of private property as a matter of course. But I ask him why in that case the capital of individuals can very well be used in land warfare for the support of the invaded State? There is no reason why several patriotic millionaires should not lend their whole fortune to the State; and is not the ready money of individuals on land much more useful than goods afloat at sea, which must first be turned into money? Nay, this reason is just as meaningless as his second notion, that in land warfare private property is bound to the soil, and cannot be rescued from the invading foe, while, in naval warfare, on the other hand, merchandise may be exposed to the risks of war without natural hindrance. If the great adventurers continue to carry on their commerce during a war, are they, according to him, to be made responsible for such carelessness? According to that, would not the peaceful inhabitant also have to lose his property in land warfare if, on the outbreak of war, he did not quickly put his fortune out of reach, but kept it by him? How far is private property, *e.g.*, great, aggregations of capital, to be bound to the soil? Is it not open to any citizen on the outbreak of war

[1] P. 24.

to secure his money in the banks of a neutral State?

Just as little can I recognise a reason for differential treatment of private property on land and at sea in the fact that in the former case it is on hostile territory, and in the latter at sea, that is, no man's land.[1]

The reason why in naval warfare, in spite of the contrary being established in land warfare, a right of prize still exists, is to be sought for, not least in the fact that the law of booty in the latter has a far longer development behind it than in the former. A law of nations can notably only be evolved where nations regard themselves as equally privileged. Whereas on land this was arrived at only at a very late period, primarily by means of the Peace of Westphalia, in naval warfare, a generally acknowledged international code could only be evolved much later, because throughout some one State held the predominance at sea. In the fifteenth and sixteenth centuries the Spaniards, and in the seventeenth the Dutch, could never consent to any reform, because they, as the dominant maritime Power, had no interest in doing so. Since the decline of the power of the Netherlands, England in particular has rejected every attempt to abolish the law of prize. That Power regards international law as in reality only a factor which can, in a marked degree, conduce to the maintenance of its safety, by helping to hamper the operations of its

[1] Cf. Choate's speech in 1907, Prot. III., pp. 763, 764.

enemies.[1] Notably at the first Hague Conference, the military representative of England, General Ardagh, declared that, for his country, questions of international law were only such as concerned the land. The hopes of a change in the attitude of England[2] towards the question of prize at sea that arose on the formation of the Campbell-Bannerman Cabinet in 1906, have, unfortunately, not been realised.

[1] Cf. Ph. Zorn, *Deutsche Juristen-Zeitung*, Oct. 1st, 1906: further A. Zorn, as above, p. 10.
[2] Cf. Eyck, *Deutsche Juristen-Zeitung*, Oct. 1st, 1906.

LAW OF PRIZE ON LAND.

CHAPTER II.

NATIONAL PROPERTY.

THE destruction of immovables, generally, is of no profit to an invader, nor is it calculated to weaken the resources of the enemy he is driving back. Over immovable private property he acquires no right whatever, in as far as the necessity of war does not demand the contrary. Over public property of the same kind, he certainly never acquires rights of ownership, but only those of disposal and user. This amounts to saying that the invader must keep within the bounds of legitimate dealing, as far as military necessity may allow. One might then say that he may, cut down the forests so as to procure the sinews of war by the sale of the timber. Such, however, is not the case. Rather there comes in as a modifying factor, as against the fundamental principle above set forth, the consideration that the cultivation of a country would have to suffer in too ruinous a fashion under such a course. But the timber may very well be used for the building of bridges and similar purposes. The destruction of

bridges is naturally permitted in cases of military necessity. The suggestion first put forward by Pillet,[1] according to which the invader is to give notice of his intention to break down a bridge, and his adversary may not thereupon use the said bridge must be shattered by the very nature of war, seeing that in case of necessity one cannot possibly adhere to arrangements of that kind.

The wording of Art. 55 of the Code is as follows:—"The invading State shall only regard itself as the administrator and user of the official buildings, demesnes, woods, and agricultural holdings which belong to the hostile State and are within the occupied district. It is bound to protect the mesne product of these properties, and to manage them according to the principles of usufruct."

The view that by the mere invasion of the enemy's country, immovable State property, *i.e.*, the domain of the State becomes the invader's, has, accordingly, long since been obsolete. A final transfer of State lands can, as a rule, only be effected by the conclusion of peace, *i.e.*, by a special compact. "The victor," declares Lueder,[2] "has no power of acquisition or alienation, which may be spoken of only after an effective conquest, not before; not even in the case of protracted occupation." Government establishments devoted to public worship, charity, education, art, and science

[1] "Les lois actuelles de la guerre," 1901.
[2] IV., p. 490.

are of as little value to the invader in recouping the expenses of war as State land and soil, etc. Doubtless the high destination of these establishments here comes to the fore, and by Art. 56, sec. 1 of the Code, they are thus treated as private property. That according to the same article, the property of municipalities is likewise exempt from seizure, is due in the first instance to the fact that their funds are not State funds, and, therefore, are not subject to the rules concerning the treatment of public property.[1] Art. 56, sec. 2, declares expressly that all intentional destruction, removal, or damage of such institutions, of historical monuments, or works of art or science, is forbidden and penalised. Sichel[2] argues quite correctly that a combatant on his own soil may not utilise the privileged position of such institutions to protect himself against the attacks of the enemy, *e.g.*, by taking military observations from church towers.

As regards movable public property, Art. 53, sec. 1 of the Code lays down "The army of occupation can only lay hands on the ready money and the valuables of the State, as also upon outstanding contributions payable to it, stores of ammunition, means of transport, depôts of supplies, and stores of provisions, and, further, upon all movable property appertaining to the State which seems calculated to further the enterprises of war."

At this point it is necessary to refer the reader

[1] Cf. Meurer, *Kriegsrecht*, p. 233.
[2] P. 38.

to the arguments given in Chapter I. The following consideration must be mentioned at this juncture. It cannot be denied that the decision as to whether private or public funds are in question may frequently lead to difficulties. Yet these are not so great as Bonfils thinks.[1] In any case of doubt the impounding Power can first issue a voucher of receipt which—as will later have to be shown—is meant for nothing but a proof of obtaining possession. Also, Bonfils' contention that many banks only serve certain strata of the people, and that, therefore, not the whole State, but only certain portions of the nation are injured by the seizure of their funds is applicable, I take it, only in rare instances. It is a matter of course, for instance, that the deposits of individuals in Government banks may not be seized.[2]

Art. 53, sec. 1, of the Code lays down that the invader may lay hands on outstanding contributions due to the enemy. "Outstanding" indicates that it can here only be a question of monetary contributions. Therefore this declaration can scarcely be called unjust. The debtor must merely pay the invader instead of his original creditor. To be sure, in so far as debtor and creditor, especially when one of the two is the State, stand in protracted business relations to one another, each is concerned that the other does not fall into difficulties. This decision often implies a

[1] *Ibid.*, No. 1188.
[2] Cf. Schiemann's work on Public Banks.

serious infringement of the rights of a third party. Thus the matter may be very unpleasant for the debtor if he has not received the consideration for which he is debited, for the Power impounding the debt will not be able to trouble about it. A number of outstanding writers, such as Calvo, Fiore, Klüber, Heffter, Pradier-Fodéré and Ronard de Card declare that the transfer of the demand from the old to the new creditor is in no way to be justified. Neither a cession, nor an assignment, nor any other legal process is here present. But they must be answered that this is not a case of civil law, and that the principles of that law cannot be applied to it. By the occupation of a district the legal authority passes to the invader, and he acquires the power and the right to adopt all the measures which seem to him necessary to his purposes. Only, of course, he must keep within the limits permitted by the laws of war. It must at least be regarded as quite a matter of course that the occupying belligerent has the right of forbidding payments to his opponent while the war lasts.

CHAPTER III.

RAILWAYS, ETC.

QUITE a special consideration must be devoted to railways, telegraph and telephone lines, and other means of communication. Railways in particular are of quite exceptional value in war. The constant extension of the system in all countries has lent the tracks an outstanding importance for the dispatch of troops. Even in constructing them in time of peace regard is paid to the interests of national defence. They are thus an absolute weapon of war, and not merely a relative one which, on the outbreak of hostilities, enters a definite relation to the same. Precisely because of their pre-eminent importance, special principles apply to them, seeing that their seizure is always lawful.

In this no differentiation in treatment can be made as between public and private lines. Nay, even railway rolling stock from neutral States may be impounded should military necessity demand it. The articles of the Code that deal with the matter are the following:—Art. 53, sec. 2, says: "All means whether on land or in the water or the air which contribute to the spreading of news

or the forwarding of persons or goods, with the exception of cases subject to maritime law, as also magazines of arms and all kinds of munitions of war in general may, even when they belong to private persons, be laid hands on. But on the conclusion of peace they must be restored and the compensation determined." Further, an article which in 1907 was removed from the Code and now figures as No. 19 of the new "Convention concerning the rights and duties of neutral Powers and individuals in case of war on land," lays down as regards railways running from neutral States: "Railway rolling stock coming from a neutral Power and belonging either to it or companies or individuals in it, and which is recognisable as such, may be claimed and used by a belligerent only in a case and to such a degree as imperative necessity may demand. It must as soon as possible be sent back to the country of its origin. Similarly a neutral Power may in case of necessity detain and utilise to a corresponding extent the stock coming from the territory of the belligerent Power. On the one hand and on the other compensation shall be paid according to the material used and the time during which it is used." Luxemburg in 1907 made the proposal,[1] which Beernaert had tried to put through as early as 1899, to forbid the use of neutral railways in any circumstances. Those who wished to allow belligerents the use of neutral railways disagreed at first as to whether they

[1] Prot. I., p. 157; III., pp. 214 *et seq.*

should grant compensation to the neutral Powers or a right of recovery from the railways belonging to the belligerent States, or both at once. In the end both were accorded to them. The recovery was not to bear the character of a reprisal[1]: "A neutral State will have recourse to it because being deprived of the stock impounded by the belligerent, he must in his turn requisition the stock which he finds in his own borders to ensure the service of the railways, both in the interior of the country and as regards international communications." What was considered in the decision as to the Luxemburg proposal, which was supported by Eyschen in a very subtle way, was, firstly, military necessity, and then the fact that it is often very difficult to separate the lines of the neutral and belligerent Powers, and therefore a joint use of neutral lines is not to be avoided.[2]

This last article, certainly, is most in favour of the view that in war everything must yield to considerations of military necessity. That alone can explain how it is possible for people to regard as justifiable any tampering with the chattels of neutral States or persons. Speaking generally, neutrals—we shall speak of this more in detail later—can expect no fundamentally different treatment as to the protection of property from that accorded

[1] So it stands literally in the protocol; Hüber interprets it very rightly as "a sort of right to redeem a pledge" ("Jahrbuch des öffentl. Rechts," II., p. 610).

[2] Cf., especially, the speech of the German delegate, V. Gündell, Prot. III., pp. 221 *et seq.*

to the subjects of the hostile State. It is particularly in the matter of railways that such action is most especially justified owing to their great importance.

In the Articles of the Hague Conventions just mentioned, it is clearly and plainly declared that these appurtenances must afterwards be restored. We are thus compelled fully to uphold Bonfils[1] when he says that railways and the like must be subject to restitution, even when they are State property. Yet his contention that this is so because one cannot possibly put locomotives, etc., on a par with munitions of war, seems to me incorrect. He quotes the dictum of the publicist v. Stein, which he fully endorses. "Even if railways belong to the State, yet they are in the first instance intended to promote commerce and communication in times of peace. It is only incidentally that they subserve warlike purposes as well." As we have previously explained, they had already been ear-marked as positive material of war. If you do not accept this, you might argue with equal justice that the ready money of the hostile Power did not originally subserve warlike purposes, and must therefore be restored. But this Bonfils, in concurrence with the Code, adjudges to the enemy. Railways are often of notably greater value in the provisioning and transport of troops than the corresponding money. Just recall how the defective railway communication between Russia and the

[1] *Ibid.*, No. 1,185.

Far East hindered the rapid transmission of Russian troops to the theatre of war in the Russo-Japanese conflict. The reason for the return of public railways is to be sought in their exceptional indispensability to international intercourse. Until 1899 the idea of restoring all railways was not recognised. Before that only private lines were restored.

The legal effect of the seizure of railway material, *i.e.*, the acquirement of its possession,[1] is thus identical as to movable and immovable property. The contrary view is opposed to the decisions of the Hague Conferences.[2]

The question whether rolling and fixed railway material form one inseparable legal whole has no particular practical interest. None the less it may be mentioned that Zorn[3] is hardly right in wholly rejecting a differentiated treatment of the two kinds. In some countries, France,[4] for instance, the one and the other belong to different owners, and, moreover, though the use of the lines is impossible, one without the other, yet different legal treatment of the two is at least conceivable.[5] But as in practice both are treated alike, we will not further discuss the question here.

It will be more difficult to decide whether in case the invader continues the use of the railways,

[1] A. Zorn, *ibid.*, p. 265 ; Meurer, *ibid.*, p. 316.
[2] Hence Nowacki is wrong on p. 96.
[3] *Ibid.*, pp. 263 *et seq.*
[4] Nowacki shows (p. 56) how extremely the railway systems differ in the various countries.
[5] So Nowacki very rightly, p. 61.

and obtains profit therefrom,[1] compensation is to be given. On this point the Code contains no express decision. But beyond all doubt, as regards private lines, compensation is to be given on account of profits, the more exact determining of which is a matter for the treaty of peace; as to public railways, on the other hand, it is not.[2] In 1880 this was determined by Arts. 51 and 55 of the Manual, and the Code has only failed to declare it clearly enough. Moreover, in the war of 1870–1 the Germans acted on these principles. The theories above propounded specially justify this conclusion. State railways are not protected quâ public property, but because of their great importance to communication. The maintenance of this demands restoration after the war, but by no means with compensation both for the profits derived from them and for other use made of them. Quite otherwise is it with private property. This is in principle inviolable, and where military necessity forces one to act in contravention of that principle, compensation must be made.

The invader can, of course, raise the charges of the railways in so far as the exceptionally high prices of management force him to do so. He will only be allowed to go beyond that in cases of urgent necessity. Such will, however, seldom

[1] Having regard to this, differential treatment of movable and immovable railway plant is to be rejected.

[2] So also A. Zorn, *ibid.*, pp. 265 *et seq.*; Bonfils, *ibid.*, Nos. 1,185, 1,186; Sichel, p. 31; and Meurer, *ibid.*, pp. 315 *et seq.*

occur, because the use of the line by private persons, as was seen in particular in the war of '70–71[1] is very limited. The German military railway regulations forbid all private transit at the theatre of war and in its neighbourhood.[2]

Let it be remarked further, that at the Hague in 1889, the view was expressed that on the requisitioning of private railway plant the owner shall receive some sort of a voucher upon which he may later base his claim for compensation. Unfortunately, although there was no visible reason for its omission, this decision was not embodied in the Code.

Postal, telegraph, and telephone arrangements, steam and other vessels, are treated precisely like railways.[3] Art. 53, sec. 2, speaks quite generally of "all means of communication and of transport on land, and sea, and in the air." They expressly refrained from giving a detailed list of the matters appertaining hereto in the article, "any communication being risky, and never complete."[4] The Japanese proposal to strike out "on the sea," which was based on the ground that the regulation of questions belonging to maritime law was the work of the fourth committee, was not carried. It was taken into account "that the right of capture

[1] See also for railways in time of war, "Sarah Bernhardt's Memoirs," vol. I., 1908.

[2] Cp., Nowacki, p. 93.

[3] Cp., the special treatment of railway ferry boats in Nowacki, pp. 138-156; also Prot. I., p. 159.

[4] Prot. I., p. 102.

at sea may be applied in a continental war to the case of vessels taken in a harbour by a body of troops, especially as regards vessels designed for river work."

All objects named in Art. 53, sec. 2, of the Code are to be spared as far as possible, and may only be impounded in case the adversary has urgent use for them. By Art. 54 underground cables which connect invaded territory with neutral are also placed on an equality with those objects. They must be restored on the conclusion of peace, and supposing they are on the property of private individuals, compensation must ensue. Hereby the proposal made even in 1874 and 1889 by Denmark, for placing "connecting cables within the boundary of the foreshore" [câbles d'atterrissage] on an equality with telegraphs on land, was at length carried on the renewed proposition of Denmark in 1907.

CHAPTER IV.

PRIVATE PROPERTY.

WE must now consider the exceptions to the inviolability of private property.

According to Art. 53, sec. 2, stores of arms and all munitions of war may be taken from private persons, as one must of necessity deprive the enemy of the use of such. Also against prisoners of war a similar procedure is desirable to remove the possibility of their making use of these weapons. Otherwise, as regards them also, private property is inviolable in accordance with Art. 4, sec. 3, of the Code. Of course the invader's own need often drives him to the seizure of munitions and the like. In all cases, without exception, restitution, if not compensation, takes place on the conclusion of peace.

By far the most important exceptions to the inviolability of private property are as to what are called objects of requisition—natural products, contributions, *i.e.*, forced payments and fines or penalties exacted.

Natural products include not only provisions but clothes and shoes. In this connection we may best

consider the levying of taxes by the occupying Power,[1] although public taxes, as being leviable claims of the State, form part not of private but of public property.

At this point a special warning must be given against theoretical arguments which do not tally with standards of international law recognising military necessity.[2] Regrettable as it is that the inviolability of private property is often infringed, on the other hand, stress must be laid on the fact that in cases where an army is in danger of perishing from hunger, for want of the necessary means of sustenance, any such infringement is justified by the necessity. It would be foolish to wish to carry the protection of private property so far that the invading troops ran the risk of starvation.[3]

Here again, generalisations are of little value, because the situation may be exceptionally many-sided. There must, for example, be a great difference according to whether the army stays only for quite a short time or passes several days in the same place. In the first instance speed is necessary;

[1] As the Code does.

[2] Cp. Zorn, "Die Fortschritte des Seekriegsrechtes durch die Haager Konferenz," p. 178. "If I mistake not, at present the danger of international law is less in the direction of misty phantoms than of pettifogging formalising which is not in keeping with the reality of things, and therefore can only be a serious damage to the theory and practice of International law.

[3] Cp., Laymann, "The Feeding of Armies Numbering Millions in the Next War."

therefore, formal procedure in all things will not be possible. It is of no less vital consequence whether the army needs the supplies at once or only in a short time, and, further, whether provisions are soon to be expected from the home base. For in time of war when a great body of men has to receive supplies, provision must be made many days beforehand. Moreover, very much depends on the attitude of the country people. How much more leniently may one deal with them if they do not hide their provisions, and do not commit hostile acts. If, moreover, the troops possess a great store of money, payment in cash, wholly or in part, will be possible and there will be no occasion for using the formality of vouchers or receipt.

On the other hand, we must adhere firmly to a correct interpretation of the axiom, "War sustains war." This only applies to the property of the hostile State. Imposts or taxes of any sort to cover the expenses of war or enrich oneself are not allowed,[1] but only to meet the urgent needs of the army and the administration of the territory occupied. In this matter a thoroughly strict interpretation is necessary. Every avenue would be thrown open to the violation of private property if in any invaded territory taxes on any scale whatever could be levied. In this respect the invaded State stands to the invader in the relation of a mere legal party, to be sharply distinguished from the individual inhabitants and even the

[1] So Meurer aptly states, *ibid.*, p. 286.

individual corporations. From the State as such the victor can demand his indemnity, and even before peace is concluded, procure funds to meet the expenses of the war as far as possible out of its ready money, and so forth. From the individual subject, on the contrary, he can only obtain money or requisitions in kind in the instances above mentioned.

Art. 43 lays down that the occupier is bound to utilise the taxes in the first place for the administration of the territory. Only with the surplus can he deal as he chooses. In order to spare the inhabitants, it is ruled that the raising of such State imposts, tolls and dues shall be carried out as far as possible according to the usual regulations for their raising and distribution. This cannot always be managed. For instance, when the previous officials are no longer there, the enemy is in total ignorance as to the previous method of collecting the contributions, and will have to act according to his own laws. Thus, in 1870–1871, a new plan was introduced for the levying of indirect taxes on the French territory occupied, as, owing to the resigning of many French officials, the carrying out of the complicated French system, was impossible.[1] For this reason it may well prove that such taxes cannot be collected at all. They are then replaced by contributions. These, however, are by their nature really substituted taxes, and are only incorrectly called contributions.

[1] Sichel, p. 28.

We may, with greater reason, speak of contributions where the imposts are levied to cover the cost of administration. This is the upshot of Art. 49, where they stand under the heading of "other levyings."

It should be mentioned that Art. 48, touching the further levying of taxes, speaks in a conditional mood. This was done chiefly at the instance of Beernaert,[1] who, in 1899, vehemently opposed the recognising of the act as lawful.

Further, the view—propounded by Lammasch at the Hague in 1899, and afterwards shared by others—that one should exhaust the enemy's strength by contributions and requisitions, and so put an end to the war, must be opposed. This idea is at variance with modern principles of the laws of war. As all destruction of the enemy's private property contributes to weaken one's opponent, the utmost possible devastation of his country would be the best means of quickly achieving victory. Such a course, however, can to-day no longer be regarded as permissible.[2] For Art. 47 lays down that "Plundering is expressly forbidden." Lammasch is here on the wrong tack, and, as will be shown further on, this pernicious conception of the nature of war also tends toward the justification of the right of prize at sea. But even the report of the French representative, Fromageot, in the debates

[1] Cp., Meurer, *ibid.*, pp. 207 *et seq.*

[2] Certainly England adopted a different course in the Boer War and destroyed numberless farms.

of 1907, in favour of abolishing that right, speaks of the "impossibility of admitting that one ought to prevent war, or hasten the end of it, by making it as terrible as possible." [1]

There must in practice be no fundamental difference between the treatment of contributions and that of requisitions.[2] The crucial point of the questions which are here mooted was fixed by Col. v. Schwarzhoff in 1899. Natural products are procured either through the medium of the municipalities, or directly from the individual inhabitants. But in this way injustices in the incidence generally occur. For, by the nature of things, cattle and other means of sustenance cannot be so equally divided among the inhabitants as money payments. Besides which, with the latter, a more equitable distribution is possible just because they are levied according to the already existent systems of taxation, as Art. 51, sec. 2, expressly says. For this reason another method of procuring provisions must be maintained, namely, that of first obtaining money payments, and with them procuring the provisions in open market by cash purchase. This also has the effect of making the inhabitants much more readily produce and sell the provisions they are hiding.

At the first Hague Conference there was a partial opposition to putting contributions on a level with requisitions, and a wish that the former should be

[1] Prot. I., p. 246.
[2] Cp. A. Zorn, *ibid.*, p. 308.

sanctioned only as quite rare exceptions. Beernaert,[1] notably, saw in such equalising, a breach of the principle of the inviolability of private property, and a reminiscence of the old devastations. Yet it is not clear how far this should be the case as regards contributions in particular any more than as regards requisitions. One must surely see that the ultimate aim is to get provisions only by means of money payments, that is, that the object of money payment is the same as that of requisitions. Which right shall be exercised in any case can only be decided in the particular instance. Let us suppose that some soldiers are quartered in a village: here requisitions will be most suitable. For where the requirement is small, it is more convenient to get the provisions from a few people than to buy them out of contributions. Lueder[2] cites a very good instance. He says money payments are simpler for both parties where the necessary products are lacking in the locality to be levied upon, but are forthcoming in abundance in the neighbourhood.

The principle of putting contributions and requisitions on an equal footing was recognised in 1899 by all the powers, with the exception of Switzerland.

Against the arguments heretofore adduced, the objection cannot be made that contributions in kind on the strength of Art. 52, sec. 2, should as

[1] Cf. Meurer, pp. 279 *et seq.*
[2] H. H., § 117.

far as possible be paid for in cash. In reality, for want of the needful money, that is but seldom or, as Bonfils thinks, never possible.

A regulation which is practically not less devoid of meaning is the requirement of Art. 52, sec. 1, by which contributions in kind must be in proportion to the resources of the country.[1] No heed can in reality be paid to this, because the welfare of the soldiers comes first. The principle is already established that such contributions may only be levied to cover the needs of the army, *i.e.*, only in a case of military necessity. The needs are not to be altered at pleasure, but only determined on the basis of the numbers of the army, and can thus as little be graded to suit the resources of the country.

The theorists have puzzled their heads how it can be a duty to furnish resources to an enemy. "Such a law is inconceivable," opines Funck-Brentano, and Bonfils is particularly severe in his ruling as to contributions. The justification of these arrangements is to be sought in the fact that the invader by occupying, becomes possessed of the power to compel the subjects to provide the necessary maintenance. But this does not suffice, as Dahn wrongly opines[2]; it is only through military necessity that this power becomes a right.[3] Therefore it stands to reason that the people are quite unable to refuse the payment of

[1] So, too, Zorn, p. 315.
[2] "Bausteine," V., p. 175.
[3] Röpcke's opinion that the right of prize at sea is based on the right of the enemy is untenable (p. 9).

contributions in such a case, as in 1897 the Greeks did in the war against Turkey. Under such circumstances the invader is justified in taking extreme measures of compulsion.

To the extent that Art. 51 requires a written order and the responsibility of a general with an independent command in compulsory buyings, whereas Art. 52 with regard to exactions in kind does not mention a written order, and considers the authorisation of the commander of the locality occupied sufficient, the equalisation of contributions and requisitions was not adopted in the formal regulation of the law at the Hague in 1899. This difference in formal treatment is by no means to be approved. It has not been admitted thereby that levyings in kind are to be regarded as the usual method. Money payments are the exception. Rather, in the numerous instances where there is urgent need for means of sustenance, the provision of such supplies is not to be delayed.

In the case of naval warfare, a breach of the principle cited is not to be seen in the fact that by Art. 3 of the " Agreement concerning the bombardment by naval forces in time of war," open towns, etc., may be bombarded for refusing requisitions, while, on the contrary, by Art. 4 of the said agreement they may not be bombarded for refusing contributions. The point here is that the bombardment of such towns is such a terrible punishment to the inhabitants that the infliction

thereof must be limited to the utmost. Contributions were excluded for the reason that they subserve no such urgent need as requisitions. This practically amounts to saying that naval commanders will be always demanding requisitions.

For every contribution and requisition, if cash payment is impossible, a receipt is to be given. It is only slowly that this decision has been able to establish itself in international law since 1785. Even in 1889 Lueder[1] declared "the right of requisition without payment still obtains." But in 1870–1, the principle of vouching for the receipt, and, consequently, that of repayment, were already recognised by the German troops. If Art. 52, sec. 3 says "The payment of the sums owing shall be made as soon as possible" this clause, which was added in 1907, is of no weight. In actual fact, the Power would never have the means of making payment until the conclusion of peace.

As already mentioned, it is determined in the treaty of peace by whom the various vouchers for requisitions or contributions are to be redeemed. As a rule, the vanquished State will have to discharge this duty towards its own subjects, when it is a matter of internal polity as to how it may cope with this obligation.[2] Otherwise, the victorious Power has these sums paid to it for its own citizens in the war indemnity. In this case it is under obligation towards its own subjects to apply the money to

[1] H. H., IV., p. 502.
[2] Cp. A. Zorn, *ibid.*, p. 314.

stipulated purposes. In reality, therefore, the restitution always takes place through the State as intermediary, and never to the injured citizens directly. As Meurer[1] justly remarks, the voucher is only to insure the proof of payment. In these decisions nothing has been altered, as regards the Code, by Art. 3 of the Convention already mentioned.

As for so-called "penalty demands," Art. 50 of the Code lays down that no penalty in money, or of another kind, can be imposed on a whole population because of the doings of individuals, unless it be that the inhabitants must be regarded as sharing the responsibility, even if only passively.[2] It is here, legally speaking, a question of reprisals. For one thing, compulsion is to be indirectly exercised by threatening inhabitants, and, moreover, by the carrying out of the punishment, a warning against further acts of hostility is to be given. This right can be fully justified. Having regard to the seriousness of every state of war, special severity cannot be adduced, especially where the punishment consists only in imposing a fine.

To conclude, the question must be raised whether the subjects of neutral Powers who happen to be in the occupied territory are to be treated precisely as its hostile inhabitants. A German proposal at the second Hague Conference[3] tried to bring it about

[1] *Ibid.*, p. 299.

[2] Cp. Meurer, *ibid.*, p. 287; A. Zorn, *ibid.*, pp. 240 *et seq.*

[3] The report of this proposal was made by the Swiss Col. Borel.

that neutrals in the territory of belligerents should, as far as possible, be untouched by the war in progress. It was wished to create "a special position" for them.[1]

The uncertainty hitherto existing with regard to the treatment of neutrals, and with it the source of many disputes between neutrals and belligerents, has to be removed. In the Committee, however, an opposition made itself felt on the part of England, France, Holland, and Russia, in favour of treating neutrals exactly like the hostile Power's subjects. The German proposal had contained three heads, of which only the first, containing a definition of the conception of neutrals, was submitted unaltered by the Committee to the full House. On the subject of the second, "In regard to services rendered by neutrals," no agreement was arrived at. The German scheme had clung firmly to the thesis that neutrals could in no circumstances be employed in military duties in the armies of belligerents. In opposition to this, the Committee had allowed the engaging of neutrals in military duties "in accordance with the laws of the belligerent Power," at the instance of Great Britain and Belgium. The third clause of the scheme, "Concerning the property of neutrals," was meant to exempt neutrals from paying contributions which are not simply intended for purposes of administration, and to regulate certain questions of

[1] Cp., Prot. I., p. 126; also Huber, *ibid.*, pp. 606 *et seq.*

compensation where the property of neutrals is violated.[1]

This clause was so curtailed by the Committee, that it only dealt with railways and ships.[2] At the fifth Plenary Sitting, therefore, Frhr. v. Marschall was right in remarking on the alteration of the German scheme. "They have kept the head, I see. But there is scarcely anything left of the body."[3] Of the German scheme there remained intact only the definition as to neutrals, and the decisions as to neutral railway plant, which were afterwards included as Arts. 16—19 in the "Agreement regarding the rights and duties of neutral Powers and individuals in war on land."

Even though in this way the debate on the position of the property of neutral individuals led to no result, yet much light was thrown on the question by the proceedings.

The opponents of the German scheme had in Committee[4] pointed to the fact that neutrals were, apart from military service, subject to all the burdens of a foreign country. The taxes had to be paid by all, without regard to nationality. The same principle, they said, must be applied in time of war. Even the Code of 1899 had made no difference between neutrals and the subjects of the belligerent Powers. The foreigner who settled in

[1] Huber, p. 608.
[2] As to the ships there was no agreement later on.
[3] Prot. I., p. 126.
[4] Prot. I., p. 154.

another country knew that from the start he exposed himself by so doing to the great burdens to which the subjects of that country were liable. He need not, therefore, complain if in time of war he were treated in just the same way as they were. This point of view I regard as perfectly correct. Even Féraud-Giraud and Bonfils upheld the principle that neutral aliens must share the lot of the country to which they entrust themselves and their fortune. Englishmen experienced this in the Franco-German War. Contributions and requisitions are in no way to be regarded as acts of hostility, and fall even upon the subjects of the occupying hostile State. It is only the myrmidons of armed Power that are to be regarded as enemies. In contrast thereto stand the peaceful inhabitants, no matter to which nation they belong. It must also be remembered that a common way of life with the denizens of the enemy's country makes neutrals for the most part friends of the country in which they live. The representative of England contended with justice in 1907, that "Every English colony contains a very considerable population of foreigners who have been there for a long time, most of whom were born there, and regard it as their new home, although they have not formally renounced their original nationality, and who by no means wish to benefit by such exemptions as it is proposed to grant them. It must not be forgotten also that it is often difficult to determine the nationality of the peaceful inhabitants at all. Japan's delegate,

in 1907, rightly pointed out that "in the Far East, many countries have no laws concerning nationality, and one might find whole populations whose native land was wholly undetermined, or might be modified from one moment to another by decisions far too interested to be acceptable."

Added to this, as Bourgeois set forth, are the practical difficulties that contributions and requisitions are imposed, by reason of place, and not by reason of person.

How burdensome it would be to have first to decide each time what persons were exempt from the payment! How simple, comparatively, is the formality now, when only the number of the inhabitants is taken as the basis of the calculation!

As against this the representatives of Germany, Switzerland, and North America urged the claims of humane considerations. The German proposal was evoked by the endeavour to limit the miseries of war to as small a number of victims as possible. The subjects of the hostile country could not be exempted, but neutrals might. The former being connected with the combatants by ties of blood were bound to uphold their country in the struggle, and hence to pay contributions to the enemy. But with neutrals it was otherwise. "There are foreigners in the territory of a belligerent State only by reason of the one material fact of domicile, who have no connection with that State, and who are neutral because their own country is neutral in the conflict." These arguments rest on the false

assumption that contributions and requisitions are hostile acts.

The German proposal was, it is true, so far contradictorily, or at any rate incorrectly, worded that at first no contribution was to be imposed on neutrals, and in a later clause the violation of neutral property was to be allowable in cases of military necessity. But is not the levying of contributions such a case? In this respect the Swiss proposal was legally more subtle, for it made no special mention of contributions at all.

Let me mention that many Powers made compacts with one another by which their respective subjects, should they in time of war belong to a neutral Power, were to occupy a privileged position corresponding to the German proposal.[1]

It might be a matter of doubt whether neutrals are to be subject to penalty contributions in the same way as the denizens of the invaded country. This question is to be answered in the affirmative. The legal ground for such lies, as was shown above, in an active or passive responsibility of the community. If, therefore, neutrals must help to pay contributions and requisitions, the applying of which does not imply any culpability on their part, they will quite certainly have to participate in the amounts exacted as penalties when they have committed or connived at hostile action against the belligerent Power.

[1] Cp. Prot. III., p. 85.

LAW OF PRIZE ON SEA.

CHAPTER V.

TIME AND PLACE OF SEIZURE.

BEFORE the question is decided whether the right of prize at sea appears to be justified by military necessity, the regulation by international law of the various rulings attaching thereto must be considered.

At the outset of a naval war a so-called period of grace is generally allowed to the enemy's ships within which they may place themselves in safety. This usage was first put into practice by France and England in the Crimean War in 1854 and has since been followed in almost all wars.[1] In the year 1898 the United States fixed a respite of thirty days for all ships lying in their waters. All these concessions were based on the endeavour "to reconcile the interests of commerce with the necessities of war, and even after the outbreak of hostilities to continue to protect, as amply as possible, enterprises entered on in good faith and in progress before the war."[2]

[1] Cp. Prot. III., pp. 825 *et seq.*
[2] Prot. I., p. 250.

Recently the Hague Conference of 1907, in a "Convention concerning the treatment of an enemy's merchant-ships on the outbreak of hostilities," has come to more exact conclusions on the point. According to that, it is "desirable" that in the following two cases the ships be allowed to clear at once, or within a "sufficient" time,[1] and with a safe-conduct make at once for their port of destination or some other port specified to them[2]: —(1) Where merchant ships of one of the belligerent Powers are in an enemy's harbour at the outbreak of hostilities (Art. 1, sec. 1), or (2) have left their last port of sailing before the beginning of the war and have put into a hostile port without knowing of hostilities (Art. 1, sec. 2).

As Fromageot's report makes prominent,[3] it has not been specially determined whether the respite may be used to load or discharge in, "in order that its scope may not be limited to those particular commercial operations." In the same way the duration of the respite was, quite rightly, not determined, nor was even a minimum fixed.[4] For the speed with which loading or unloading is carried out differs greatly in various ports. It has also to be considered whether the vessel has a long or

[1] Van Karnebeek and Nelidow made a difference in 1907 between the immediate leaving of the port and permission to remain during a sufficient respite. To my mind their distinction is legally immaterial. (See Prot.)

[2] For instance, if their port of destination is an enemy's that is blockaded: Prot. I., p. 252.

[3] Prot. I., p. 252.

[4] Prot. III., pp. 827 *et seq.*

short voyage before her, and, therefore, whether she must lay in a special store of victuals or not.

From the word "desirable," as also the wording of Art. 2, "ships which were not allowed to clear," it follows that the signatories of the Conference did not admit the asking of a respite to be a right. "However equitable," says the report of the Frenchman Fromageot, "the principle of this measure may appear, one could nevertheless, neither fail to note the practical difficulty of framing a universally obligatory regulation, nor how the maintenance of an obligation might eventually conflict with the legitimate interests of the belligerents."[1] Germany and Russia in particular advocated that the granting of a respite should be made obligatory; France, England, Japan, and Argentina were against it. Renault contended,[2] *inter alia*, that many merchant-ships might be turned into ships of war, and that one could not expect a belligerent Power to allow these to continue their voyage. Thereupon the Dutch delegates proposed that such vessels as could readily be transformed into fighting ships should be excluded from the Convention. But even subject to this condition they would not acknowledge an obligation, and ended in agreeing to the Swedish proposal to declare a respite "desirable." Nevertheless, that a notable advance in the ordering of the question had been attained is shown by the following decisions. Merchant

[1] Prot. I., p. 251.
[2] *Ibid.*

vessels which, owing to superior force, have been unable to clear within the stipulated time, or to whom permission has not been granted so to do, may be laid under embargo, subject only to the obligation of restoring them after the war, without compensation, and may be used by the belligerents only with compensation,[1] *i.e.* are not subject to impounding (Art. 2 of the said Convention). Up to the second Hague Conference these ships were nominally subject to seizure. It was, however, taken into consideration that it was incompatible with the modern development of commerce to admit "that shipowners, underwriters, shippers, and those interested in all sorts of maritime commerce should have to go in fear of seeing their enterprises, undertaken in the good faith of pacific relations, founder in the brutality of an unforeseen confiscation, in every period of more or less political tension between States. On the other hand, it was to be remembered that these ships might later be used as cruisers, and it was agreed that the confiscation of such ships should be forbidden, but not their temporary retention.

By Art. 3 of the said agreement, traders which cleared from their last port of sailing before war broke out, and were caught at sea in ignorance of hostilities, are treated in almost the same way. Only in the case of these ships their destruction is also permissible, provided that care is taken

[1] No definite agreement was arrived at in 1907 as to the amount of the same; cp. Prot. III., p. 940.

to preserve human life and the ship's papers, and that later compensation is made. Everyone agreed in 1907 that this decision was particularly drastic, and Renault[1] expressed the opinion that one might almost suppose that opponents of the right of prize wished to draw the most extreme conclusions from the existing circumstances in order to emphasise the justice of their view. But in the interest of belligerents this rule seems to be justified, even though it might perhaps have been better, in accordance with the Russian proposal, to authorise the destruction only when the preservation of the captured ship would jeopardise the safety of the captor or the success of his operations. At any rate, the obligation to compensate will now induce the Powers to make use of the right of destruction only in urgent cases. As soon as the ships have touched a port of their native country, or a neutral harbour, they are subject to the laws and usages of naval warfare, *i.e.* to seizure. These vessels also were, until 1907, subject to the law of prize without any limitation.

By Art. 4, hostile goods are treated exactly like ships.

None of these decisions by Art. 5 applies to vessels whose structure shows that they are intended to be transformed into fighting ships.

This exception was included in the Convention at the instance of England. Very violent contentions arose over it in 1907. Germany and France

[1] Prot. III., p. 944.

notably contended that the whole agreement lost its significance through this clause, and this contention is in reality not entirely wrong. For every steamer of high speed can also be employed as an auxiliary cruiser, and every vessel, at any rate, in mine-laying.[1] In any case precisely the most valuable vessels, which are often the pride of whole communities—one has only to think of the splendid four-screw turbine steamer, *Lusitania*, of the Cunard line—are thereby exposed to the whole barbarity of the law of prize. Holland and Austria endeavoured in vain to bring about a compromise by which all ships which had been granted time to clear might not again be used by their native country for warlike purposes.

The extent, however, to which views differ as to whether a ship is to be regarded as an auxiliary cruiser or not is shown by the fact that England[2] then declared that it had only five merchant ships which were intended beforehand for fighting purposes. On the other hand, the latest "Naval Almanac" gives a total of 27 such English auxiliaries for the end of 1908.

Under these circumstances it is, of course, not possible that the Powers should inform each other mutually what ships are meant to be used as auxiliaries. For, as a matter of fact, what ships they will use for these purposes will only appear in the course of war and as necessity requires. In

[1] Prot. III., p. 1033.
[2] Prot. III., p. 951.

any case, as most of the Powers then declared, this clause must not be regarded as including all such ships as are in any way suited for such transformation, but only such as with reasonable certainty will be expressly transformed, *i.e.*, in the first instance, those in regard to which the hostile Power has made a compact with the companies to that effect. At the same time, these compacts are seldom known owing to their delicate nature.

The upshot of it all is that the said Art. 5 not only greatly limits the value of the whole agreement, but will also give occasion for many differences of opinion as to which ships it applies.

The new settlement of the question of the respite bears, as Zorn rightly insists,[1] the character of a compromise. An obligation to grant such grace was not recognised, but seizure was at the same time forbidden, and the laying of an embargo substituted. This undoubtedly means a great advance.

It must also be remembered that Germany rightly raised a protest against the obligation to compensate for the destruction of ship and cargo.[2] Later there will be another similar case to mention in which a uniform obligation on all would seriously handicap particular Powers. A Power like England, that has bases everywhere, can easily get the ships into harbour.

[1] *Ibid.*, p. 194.
[2] Prot. III., pp. 918, 934, 954, 1031.

Other Powers, on the contrary, are forced to destroy in order not to injure their interests, as Fromageot's report set forth:[1] "Attention was called to the fact that the right of capture was indispensable for certain countries, as permitting the destruction of the captured vessel, and so disencumbering the captor of a prize which it would be difficult or impossible for him to carry into a national port; that to withhold this right of destruction would, in fact, compel the belligerent to leave at large any vessel which he encountered, and that the privilege of seizure was of little value if it was practically impossible to take the captive into a national port, and that thus the rule proposed would set up an inequality of conditions as between nations.

The question whether the law of prize may be applied during an armistice has, so far, not been positively determined. Of the literary authorities, Hautefeuille, Geffcken, v. Stengel, and others take the standpoint that during the stay of fighting the right cannot be exercised. They may cite in support of their view particularly, the Versailles armistice of January 28th, 1871, in which it was laid down that the right of prize at sea might not be exercised during the cessation. This was, indeed, not directly put in words, but was the upshot of a clause in Art. 1, by which prizes taken between the proclamation and conclusion of the armistice were to be restored. Perels and

[1] Prot. I., p. 254.

v. Mirbach,[1] as also the positive French decision of 1907, express the contrary view. The second insists that an armistice is no peace, and that, therefore, as a rule, it cannot be tolerated that fresh means of fighting should be carried to the enemy. But what seems to me decisive is the appeal to the fact that during an interruption of the struggle, in which the most dangerous and almost exclusively determining operations are prohibited by mutual agreement, even so insignificant a form of hostility as the seizure of merchant ships must also be forbidden. Hence the exercise of the right of prize during an armistice must be regarded as tabooed, unless an express agreement to the contrary has been reached. Loewenthal[2] here differentiates between the treatment of neutrals and belligerents. He considers that an enemy's private property may not be taken during the armistice, but that, on the contrary, neutral property which has been brought to the enemy to supply his military necessities may be taken. This differentiation seems to have no justification. How far, pray, is the enemy's property to be of less use to the enemy than neutral?

The right of prize can, of course, only be exercised outside neutral waters, as is expressly laid down in Article 1 of the "Agreement touching the rights and duties of neutrals in case of naval war." No decision as to which waters are to be

[1] P. 31.
[2] Pp. 129, 130.

regarded as neutral has been arrived at, so that the old international disputes on this point still continue.

While this latter article is only meant as "the expression of the dominating idea of this portion of international law,"[1] Art. 2 of the Agreement gives a special decision as to neutral coasts: "All hostilities committed by warships of belligerents within coastal waters of a neutral Power, including seizure and the exercise of the right of search, form a breach of neutrality, and are unconditionally forbidden." In case of action in contravention of this, Art. 3 lays down the following: "If a ship has been captured within the coastal waters of a neutral Power, that Power must, in so far as the prize is still within its sovereignty, employ all the means at its disposal to bring about the release of the prize with her officers and crew, and to hold captive the prize-crew placed on board her by the captor. Should the prize be beyond the bounds of its sovereignty, the capturing Government must release the prize, with officers and crew, at the demand of that Power."

It is necessary, therefore, to discriminate whether the prize be still within neutral waters or not. In the former case the neutral Power must release the prize, no matter whether it be a neutral's or an enemy's ship. The British proposal, on the basis of which the debates at the Hague in 1907 were principally conducted, had laid down "that the

[1] Prot. I., p. 297; III., p. 572.

neutral Power must release the prize."[1] Yet this decision seemed too definite, seeing that the neutral Power has not always the means necessary to such action. Denmark[2] and Norway[3] notably protested that, considering the great extent of their coasts and their limited naval forces, they could never carry out such an obligation. Therefore, it was decided that the neutral Power should employ only the means at its command for the purpose of releasing the prize.

Should the prize have already passed beyond the sovereignty of the neutral Power, then the latter's Government at once requests the Government of the capturing Power to release the prize, at the same time demanding satisfaction. It will do so as soon as possible, in order to anticipate a protest from the Power to which the captured vessel belongs. The Government of the capturing State is even so not unconditionally bound to bring about the immediate release of the prize, with officers and crew. True, in the first reading of the Article it had stood " must release," and not " employ all the means at its disposal to bring about the release of the prize,"[4] it being emphasized that it was here a question of a claim which the captor Power could satisfy if it were so disposed. At the second reading, however, Admiral Siegel[5]

[1] Prot. I., p. 299.
[2] Prot. III., pp. 573 *et seq.*, 614.
[3] Prot. III., pp. 576, 612.
[4] As to sec. 1 of that Article.
[5] Prot. I., p. 299 ; III., pp. 622 *et seq.*

drew attention to a contradiction between this ruling and Art. 3, sec. 2 *b*, of the "Convention relating to the establishment of an International Prize Court." In the latter the possibility of appealing from the National Prize Court to the International was provided for, and also the contingency of an enemy's property being at stake, and "an enemy's ship, which has been seized in the territorial waters of a neutral Power, should that Power make the seizure a matter of diplomatic complaint." There had thus been two methods left open in the discussions on the International Prize Court, one that the neutral Power should take diplomatic action, and the other that if nothing was done by that Power, the owner should have his remedy in the International Court. But by Art. 3, sec. 2, of the first draft of the "Agreement concerning the rights and duties of neutrals in naval warfare," the alternative of the neutral Power's failing to interfere was not mentioned at all. The two said articles were brought into agreement by leaving it entirely open in Art. 3, sec. 2, of the "Agreement" to the neutral Power whether it should intervene or not.

Before any release, the neutral Power would of course collect the necessary evidence as to whether the capture took place within or without its territorial waters. But what is to happen if this is a matter of doubt? Renault's report[1] passes over

[1] Prot., *ibid.*

this point abruptly, and yet the state of things seems to me extremely complicated where a neutral Power wants to release a prize and the capturing Power contends that the capture did not take place within the neutral's territorial waters. This seems to me to provide a ready source of future contentions, and this contingency must be taken into consideration in framing fresh regulations.

It has been repeatedly contended that search may not be carried out in seas too distant from the theatre of war. This view was also expressed by the Secretary of State, Count Bülow, in the German Imperial Parliament on January 19th, 1900. V. Mirbach [1] denounces as contrary to law the searching of the German brig *Ozeanus* by a Russian gunboat on the Japanese coast in 1877 during the Russo-Turkish War. But unqualified assent cannot be given to this contention until this point has been settled by the law of nations; it must be left to the various Powers to determine how far they may choose to extend their right of search.[2] Political prudence will generally induce them to act cautiously in such cases. For every Power which is at war will take care not to incur diplomatic troubles with any more countries. In the interest of commerce it is to be desired that it may soon be agreed not to extend the right of search too far from the theatre of war, for it is not creditable to our age,

[1] P. 53. So, also, Wiegner, p. 259.
[2] So also v. Bar in "März," 1907, p. 403.

that in 1904 the Russian Volunteer Fleet stopped foreign ships in the Black and Red Seas.

In this connection must also be cited the ruling of Art. 16, sec. 3, of the "Agreement," by which warships of the belligerents may not leave a neutral harbour or roadstead less than twenty-four hours after the sailing of a merchant ship bearing the enemy's flag. This clause arose from a humane endeavour to prevent, as far as possible, any hostile encounter. Of course it is open to a merchant ship, if it is so imprudent, to leave the port less than twenty-four hours after the sailing of a warship of the hostile Power.[1]

[1] Prot. I., p. 314.

CHAPTER VI.

OBJECT OF SEIZURE.

THE signatory Powers of the Paris Manifesto all acknowledged the axiom that the seizure of ship and cargo may only take place where the former as well as the latter are the enemy's. The French practice in the sixteenth and seventeenth centuries, the so-called *hostile infection*, made both alike subject to capture even if only one was an enemy's. The *consolato del mare* and the earlier English practice made the proprietorship of the wares the decisive factor, and seized an enemy's goods even when they sailed under a neutral flag. According to a third principle brought in by the Dutch, all goods in an enemy's ship were seized, but none in a neutral ship. In the treaty between France and North America, dated February 6th, 1778, the Dutch principle was recognised. Soon afterwards Prussia, in the Code of 1794, advocated the principle of the Paris Declaration on Maritime Law.

According to Art. 57 of the London Convention on Naval Warfare, the neutral or hostile ownership of a vessel is decided by the flag which it is entitled

to hoist. Hitherto no agreement has been arrived at in regard to a neutral vessel engaging in traffic forbidden to it in time of peace and reserved for the enemy's subjects.

As for the validity of a change of flag, it depends upon whether the change takes place before or after the outbreak of hostilities.

By Art. 55 of the London Convention the transfer of an enemy's ship to a neutral flag is valid, if effected before the outbreak of hostilities, provided that it is not apparent that such transfer is effected to escape the consequences attaching to the fact of being an enemy's ship. There is a presumption in favour of its nullity, if the deed of transfer is not forthcoming on board, and if the ship has lost the nationality of the belligerent less than sixty days before the outbreak of hostilities, although counter-proof is here admissible.

The strongest of presumptions exists in favour of the validity of a transfer which has been effected more than thirty days before the beginning of hostilities, if it is unconditional and complete, satisfies the legislation of the countries concerned, results in the control of the ship, and if the profits of its use do not remain in the same hands as before the transfer. If, however, the vessel has forfeited the nationality of the belligerent less than sixty days before hostilities began, and the deed of transfer is not forthcoming on board, the laying of an embargo on the vessel cannot be a matter for compensation for damage.

On the other hand, by Art. 56, the transfer of an enemy's vessel, effected after the outbreak of hostilities, is void unless it is proved that such transfer has not been effected in order to evade the consequences of being an enemy's ship. In three cases, however, there is the strongest of presumptions in favour of the nullity, (1) where the transfer has been effected while the vessel was on her voyage or in a blockaded port; (2) where a right of repurchase or reversion is reserved, and (3) where the conditions have not been complied with on which the right to the flag depends according to the laws of the flag hoisted.

It was desired in London, in 1909, to add a fourth case, namely, supposing the ship, after the transfer, should remain in the service of the party to whom she had hitherto belonged. This was, however, given up, because certain ships, owing to their construction, are only suited to certain service, and this decision would therefore have been too severe.

While this very valuable unanimity concerning decisions as to the neutral or hostile status of the ship was reached in London in spite of the strong opposition of England, the question as to whether the domicile or the nationality of the owner should determine his status could not be settled.[1] Art. 58 simply lays down that the neutral or hostile quality of the wares found on board an

[1] As to these questions, I refer above all to Liepmann, Vol. xvii. of "Zeitschrift für Intern. Privat. u. Oeff. Recht, No. 3."

enemy's ship is determined by the corresponding status of the owner. Should the neutral quality of the goods found on board an enemy's ship not be demonstrated, it is presumed by Art. 59, that such goods are an enemy's. By Art. 60, the hostile quality of goods carried in any enemy's ship holds good until their arrival at their destination, in spite of a change of ownership having taken place in the course of transit after the outbreak of hostilities. If, however, before the seizure in the case of the liquidation by the then hostile owner, a former neutral owner exercises a legal right of demanding restitution in regard to the goods, they resume their neutral quality. This exception was agreed to on grounds of equity.

The rules as to laying an embargo on hostile merchant ships are modified by the following exceptions :—

I. From time immemorial boats that are used for coastal fishery have not been seized, because it would be inhuman to deprive of their gains fishermen who, for the most part, earn their living with difficulty. Fromageot's [1] report very rightly insists, "This favourable exception is made, not for the sake of the industry, but for that of the poor folk engaged in it." Since the sixteenth century these vessels have invariably been excluded from the law of prize in the so-called *trêves pêcheresses*, the first occasion being that of the fishery treaties,

[1] Prot. I., p. 269

in 1521, between the Emperor Charles V. of Germany and Francis I. of France.

This humane usage was, however, not always observed. In 1793, the British Government had the French fishing vessels seized. Moreover, in the Spanish-American War nine fishing vessels were captured by the States, yet later the highest Prize Court released these vessels and expressly acknowledged that the exemption of such from the law of prize at sea was a unanimous axiom of all civilised nations.[1]

This decision first found its definition in International Law in Art. 3 of the "Agreement as to certain limitations to the exercise of the right of prize in naval warfare," which expressly exempts the fishing-gear, rigging, ship's fittings and cargo of these vessels from seizure. A more exact ruling as to which ships are individually to be included in this category was not sought for. Such must be left to the particular case, for tonnage, manning and method of progression vary greatly in different countries.[2] Originally it was only intended to exempt sailing and rowing boats. But Hagerup drew attention to the state of things in Norway, where most of such vessels use petroleum, benzine or steam motors, and the Portuguese and English representatives declared that in their countries the coast fishermen often used steam

[1] Cf. Niemeyer's "Zeitschr. für Intern. Privat. und Oeffentlich, Recht," 1902, Nos. 1 and 2; precisely in the same way Prot. I., p. 269; III., p. 911. (Choate.)

[2] Prot. III., pp. 970 *et seq.*, 982 *et seq.*

motors for auxiliary purposes. Accordingly, it was not desired to exclude steamboats on principle. Even a determination of the extent of territorial waters was evaded, in view of the fact that the fishermen of Japan and England, for instance, often go very far from the coast.[1] Fromageot's report insisted particularly that fishers on the enemy's coasts were not exclusively meant, but also those who practised their calling outside their own country. The Portuguese delegate, Iwens Ferraz, instanced in particular the Moroccan coastal fishery.[2] On the proposal of Austria the small local traffic was excluded from prize as well as fishing vessels: that is to say, "boats and vessels of small size carrying agricultural produce, and devoting themselves to modest local traffic between the coasts and neighbouring islands or islets." [3]

Den Beer Portugael [4] would also have liked to see the "vessels engaged in deep-sea fishing" exempted. But it was as little desired to exempt these vessels as those which, while devoting themselves mainly to coast fishing, engage also in deep-sea fishing.[5] This ruling is particularly distasteful to Japan, because fishing vessels there can also frequently be employed as transports. In the exception, to be mentioned below, in favour of vessels devoted to scientific or

[1] Prot. III., p. 971.
[2] Prot. III., p. 971. Similarly Van den Heuvel and Van Karnebeek, p. 970.
[3] Prot. I., p. 271.
[4] Prot. III., p. 896.
[5] Prot. III., pp. 982, 983.

missionary purposes, there is no mention of such an exclusive decision.

With all these vessels protection ceases in any case as soon as they take any part in hostilities. Ferraz[1] expressed the opinion, in 1907, that the mere fear that fishing vessels might take part in hostilities would suffice to suspend the guarantee of protection, but Renault[2] declared that such a fear was by no means sufficient. The Committee decided in favour of making the solution of the question depend on the circumstances.[3] On the proposal of Japan it was expressly agreed that no Power should utilise the harmless nature of the said vessels to employ them for warlike purposes while retaining their peaceful exterior. This is not to mean that the vessels may not be used for warlike purposes at all, but a pledge is to be exacted of the Powers not to use them covertly, but to show by a recognisable external mark when the vessels are in the service of the enemy's naval forces. The nature of this badge is to be left to the choice of the various Powers.

Let me point out the following peculiar fact :— Since fishermen's coasting vessels are not liable to seizure, the crews naturally do not need, as is usual with merchant ships, to give an undertaking to perform no military duties. Yet those who man the fishing vessels are constantly in

[1] Prot. III., pp. 968, 972.
[2] Prot. III., p. 969.
[3] Prot. III., p. 983.

the vicinity of their native country, and can quickly be called upon, while ordinary merchant ships and their crews are, for the most part, far away from their country, and cannot easily enter its Navy. Nevertheless, ordinary sailors must take an oath before being released. This shows how easily illogicalities may result from humane exemptions. That the number of fishermen is by no means small, is proved by the fact that in Germany, in 1900, over 3,500 were to be found on board such vessels.

In 1907, Satow and Milowanovich[1] proposed that the use of coasting vessels by an enemy for military purposes be prohibited, even in case of urgent necessity. The majority, however, took another view and that rightly. Military necessity dominates all laws of war, and to exclude fishing vessels from its scope, even in these instances, would have been going too far. Various proposals on the part of Portugal, Austria, and Norway, were intended to settle the question of compensation in case of the using of such vessels. Hagerup[2] asked for the fixing of compensation, not only in case of continued employment, but even of mere retention, and was for compensating the fishermen, not only with the actual value of the vessel seized, but also with an equivalent for the possible gains they had missed up to a 10 per cent. addition to the value of the

[1] Prot. III., pp. 972-973.
[2] Prot. III., p. 987.

vessel. As no proper agreement could be reached on all these points, it was considered best to pass them over in silence in the Agreement. Nevertheless, to my mind, the fishermen must, by the principles of the laws of war, seeing that their vessels are made an exception, be compensated under all circumstances in the case of their employment owing to military necessity. True, the compensation cannot be expected to be given on the scale of the Norwegian proposal. Even the German proposal as to compensation in war on land, which tended to fix the compensation according to the actual loss, and which was quoted during the debates as to fishing vessels, did not pass in that shape.

II. In the same way, vessels fitted out for scientific, philanthropic, or missionary purposes, are exempt from seizure (Art. 4 of the last-named Agreement.) This decision was arrived at as early as 1869 in the Russian, in 1894 in the Japanese, and in 1900 in the American Prize Regulations. The movement in favour of an international compact on the point, emanated from Italy in 1907. In view of the fact that such vessels subserve the interests of the whole of mankind, and can bring no advantage to the enemy, this measure seems fully justified. It does not matter whether these vessels belong to the State or to private owners. Of course they may not, as was expressly insisted on at the Hague Conferences in 1907, take part in any warlike enterprises. The Conferences refrained

from including this decision in the Convention itself.

In contradistinction to the decisions as to fishing vessels, no difference is made if these scientific, philanthropic, or missionary vessels also incidentally subserve mercantile purposes. In 1907, Lammasch[1] drew attention to the fact that vessels entrusted with scientific missions were often also engaged in the service of commerce, and that this was the case in 1859 with the Austrian frigate *Novara*, though France and Sardinia had both given her a letter of safe-conduct. In consequence, the word "purely" was struck out of the Italian proposal, which ran "Charged with a purely scientific, religious, or philanthropic mission."

An Italian proposal in 1907[2] laid down that the Power to which these ships belonged should send information to its opponent at the outbreak of war. The latter would then transmit a safe-conduct for them, in which it would specify the conditions of its protection. Van den Heuvel pointed out that as vessels which were in distant waters could scarcely receive such a pass, the requirement should be omitted. The slight danger of abuse, especially since there were so few ships of the sort in question, was further urged against the Italian proposal. Satow, for one,[3] observed that England had only two ships for missionary purposes. The Committee

[1] Prot. III., p. 981.
[2] Prot. III., p. 981.
[3] Prot. III., p. 1002.

endeavoured to meet the objections to the safe-conduct by making it legally incumbent upon the hostile Power to issue the safe-conduct, and at the same time to give corresponding instructions to its warships. These were to spare the said ships, even where it had happened to be impossible to deliver the safe-conduct to them. Fusinato[1] also chiefly dwelt on the argument that the hostile Power could, by means of the letter, best communicate to the vessels in question its conditions as to the guarantee granted. In spite of this, Satow[2] in particular would not hear of the safe-conduct. He quoted an instance from the eighteenth century when such a ship had been spared, although it was without any safe-conduct, and stated that the requirement was therefore a retrogression. Thereupon the Italian proposal was dropped.

Satow further proposed, in 1907,[3] to allow these vessels in case of need to make for one of the enemy's harbours. But Fusinato considered the suggestion too Quixotic, and the Committee passed to the order of the day.

Let me also mention in this connection Art. 14, sec. 2 of the "Agreement concerning the rights and duties of neutrals in case of war at sea," by which the rules limiting the stay of ships of war in neutral ports, roadsteads, and waters do not

[1] Prot. III., p. 1001.
[2] Prot. III.. p. 1002.
[3] Prot. III., p. 1003.

apply to such ships of war as are exclusively employed in religious, scientific, or philanthropic pursuits.

III. The Hague Conference having declared hospital ships immune as early as 1899, this humane precept was further developed in 1907 in the "Agreement concerning the application of the principles of the Geneva Convention to naval warfare." In the year before (1906), the Convention of 1864 had been subjected to reforms, and for that very reason articles had now (1907) to be revised. By hospital ships (*bâtiments-hôpitaux*) are understood such vessels as are simply and solely built or arranged to carry succour to the wounded, the sick, and the shipwrecked. On a par with them are placed lifeboats (*embarcations*), while on the other hand no corresponding immunity for transports that merely serve to convey the sick and wounded has yet been established. Hospital ships are divided into (*a*) Government (*bâtiments hôpitaux militaires*). Under this head, by Art. 1 of that Convention, are to be understood all such ships as are fitted out by the hostile Powers themselves. The Power in question has to communicate their names to the belligerent States. This announcement is generally to take place before the outbreak of hostilities, but is also permissible before putting such ships into use. For otherwise, in the case, for instance, of the regrettable loss of any such ships, no substitution would be possible, and the sick would be deprived of the requisite succour.

The announcement need not be made to neutral Powers. For, as Captain Siegel[1] rightly said in 1899, such ships can readily prove their nature to neutrals. (*b*) Private hospital ships of the enemy, *i.e.*, such as are wholly or in part fitted out by private individuals, or officially recognised societies (Art. 2). Their immunity is, however, only guaranteed on condition that the belligerent Power to which they belong has in the first place issued an official authorisation to them. It is also the business of international law to decide whether such vessels shall be allowed. Japan, *e.g.*, lays down that private vessels have only the right to help in so far as they belong to a Red Cross Society. All private vessels of the enemy must constantly have a certificate from the proper authority to the effect that during their fitting out, and on leaving port, they were under its supervision. Further, the names of these ships also are to be communicated to the hostile Power as are those of the Government vessels. (*c*) Neutral hospital ships, *i.e.*, such as are fitted out wholly, or in part, at the expense of private citizens, or officially recognised benevolent societies in neutral states (Art. 3). Since 1907 it has been necessary that these ships shall, with the previous permission of their own Government and with the authorisation of the belligerent, have submitted themselves to the guidance of one of the hostile powers. Naturally these ships remain neutral thereafter, and may not be included among the

[1] Meurer, *ibid.*, p. 368.

enemy's vessels of that nature.[1] In 1899 the proposal passed that such vessels need not attach themselves to any Government. The alteration of the Article in 1907 was based on a German proposal[2] which even required "that the hospital ships place themselves at the disposal of a belligerent." Yet it was only decided on the motion of van den Heuvel,[3] "that it shall place itself under his (the neutral's) direction." In the Committee there were two conflicting points of view.[4] The opponents of innovation asked: "What flag should the vessels in question fly? Would there not be something in conflict with the idea of neutrality in the fact of these ships having an official warrant for their enrolment in the fleet of one of the belligerents? . . . A neutral hospital ship cannot propose to assist one belligerent rather than the other, but should betake itself to the neighbourhood of the naval operations to be ready to assist both parties."

The comparison with land war they declared to be inadmissible: "The situation seems different for a neutral hospital ship, which operates on the high sea, and is autonomous to a degree that is impossible for an ambulance." The adherents of the German project cited, with great justice,

[1] Prot. III., p. 562.
[2] Prot. I., p. 72.
[3] Prot. III., p. 296.
[4] Cp. especially the speeches of Renault and Siegel, Prot. III., pp. 294 *et seq.*

military necessities, and convinced the majority of the members. In war, they said, the battle came first, and care for the wounded second. Should the neutral hospital ships not subordinate themselves to a war authority, abuses would be possible, especially where such ships were present in considerable numbers. Moreover, they were, supposing they had placed themselves under the guidance of one of the belligerents, free from all suspicion of hostile action, and hence, particularly as they were allowed to arm their crews and set up a wireless telegraphy station, such a decision could not be avoided. The protection of Art. 4, of which we shall still have to speak, was not regarded as adequate. There is no doubt that the new decision will not hinder hospital ships from placing themselves at the service of humanity in as great numbers as heretofore.

The belligerent power to which neutral hospital ships have attached themselves must make their names known to its opponent in the same manner as those of the other hospital ships.

All these kinds of hospital ships are to be respected, and may not be seized during the continuance of hostilities. As to the Government ships, the further special decision has been made that they must not be treated as ships of war during their stay in neutral ports.

The inviolability of hospital ships is, of course, only to be explained by their humane pur-

pose.[1] Thus it is a matter of course that they are to afford help to all parties without regard to nationality (Art. 4, sect. 1), and that, they must not be used for any sort of military purposes, as Art. 4, sect. 2, lays down. The protection therefore ceases as soon as it is employed to injure the enemy (Art. 8, sect. 1). The fact that the personnel of these ships is armed for the preservation of order and the protection of the wounded may not be regarded as calculated of itself to warrant the forfeiture of the protection (Art. 8, sect. 2). A German proposal in 1907 foresaw an occasion "in which the hospital ship is armed with light guns, in view of the dangers of navigation, and particularly in order that she may defend herself against any act of piracy."[2] However, the Conference did not go so far as to acknowledge this, for it was pointed out "merchant ships are not armed, and hospital ships do not run any more risk." Only one gun for signalling purposes was conceded to such ships, by Renault's report. As for other weapons, they are only allowed for the protection of the wounded and the maintenance of order. At any moment an agent of the belligerent parties can inspect a hospital ship and convince himself that the arms

[1] From the military point of view hospital ships help the warships by removing the wounded and thus giving them freedom of action. Yet they also hinder their operations, because the latter, in their movements, must always to some extent consider the hospital ships. Cf. Niemeyer, "Deutsche Jur. Zeitung," 1905, p. 41.

[2] Prot. I., p. 74.

are not applied to other uses. Should such an agent fall into the power of a cruiser of the State to which the hospital ship belongs, he must not be made a prisoner[1]: "His presence is accounted for like that of a picket guarding an infirmary, by the necessity for allowing the vessel to fulfil its charitable function. This motive in both cases justifies the exemption from capture." As little does a hospital ship forfeit its protection by the fact that a wireless telegraph installation is on board (Art. 8, sect. 2). At the instance of Holland this decision was expressly included in the Convention. It must by no means be taken to mean that a vessel may not be seized, should it really serve as a telegraph station of the enemy, and ostensibly be used as a hospital ship. Nay, rather it is now acknowledged that "a hospital ship may need to communicate with her own squadron, or with the shore in order to fulfil her mission."[2] Should the enemy regard it as necessary, he has the right to destroy the wireless installation on board hospital ships.[3]

In order to be able to test more precisely the function of the vessel, the right of supervision and search must be conceded to the warships of the belligerent Powers: nay, the hostile Powers can even reject the assistance of the hospital ships, give them orders to take themselves off, mark out a definite course for

[1] This decision was not included in the Agreement itself.
[2] Prot. *ibid.*
[3] Prot. III., pp. 300, 301.

them, place, as already mentioned, an agent on board, and under special circumstances, *e.g.*, the keeping of intended operations secret, even detain them. In all these cases, which Art. 4, sect. 5, provides for, the orders must be entered in the log of the vessel, unless special difficulties prevent it (Art. 4, sect. 6.)

In addition to this, the protection of such vessels is limited by military necessity. To begin with, they must in no wise hamper the movements of the warships, as Art. 4, sect. 3, prescribes. Also, it cannot be expected of the enemy's warships, that they should specially respect these ships when firing, etc.[1] Therefore, by Art. 4, sect. 4, they act during an engagement and after it at their own risk.

To enable them to be distinguished from other ships, special regulations are in force as to the way they are painted and the flag they may fly.

By Art. 5, sects. 1–3, Government hospital ships are to be marked out as such by being painted white, with a horizontal green stripe, about five feet wide, and the others by the same, with a horizontal red stripe of the same dimension. Their boats and the tenders employed in hospital service are required to be painted green.

Beside the national flag, all of them are to carry a white flag with a red cross. Those that belong to a neutral Power are in addition to hoist at the main the national flag of the belligerent to whom

[1] Not legally. None the less, as a matter of fact a certain respect is shown, as far as necessity of war allows of it.

they have attached themselves. By the decisions of 1899, neutral craft had only to fly their own flag and that of the Geneva Convention. Renault,[1] in his report to the Conference in 1907, dwelt on the fact that neutral craft for the future would fly three flags, and there was no uniformity with the land hospitals, which flew only two, that of the belligerent to whom they had attached themselves and the Red Cross. "We know no precedent to this effect." He comments on the simultaneous hoisting of the three flags. There are exceptions in force concerning Turkey, Persia and Siam. Turkey[2] substitutes for the Cross the red Crescent, Persia, the Lion and the Red Sun. Siam carries the Cross in its hospital flag indeed, but with it also the so-called red "flame." These three cognisances are also all on a white ground. At the third plenary sitting of the second Hague Peace Conference the Turkish and Persian representatives expressly gave it to be understood that they would adhere to their cognisances.[3]

Turkey, at that time, wanted at first a new article inserted in the Convention for the recognition of her cognisance. But this was not agreed to.

Art. 5, sect. 5, lays down that hospital ships detained by the enemy must haul down the national flag of the belligerent to whom they are subordi-

[1] Prot. I., p. 72.
[2] Cp. Prot. III., p. 556 *et seq.*
[3] Meurer has demonstrated how desirable it is that the Red Cross should be adopted by those three Powers as well. ("Die Genfer Convention und ihre Reform," p. 33.)

nated. A similar conclusion had been come to in 1906, in the New Geneva Convention, Art. 21, sect. 2, as to war on land. It is true, however,[1] that it was recognised at that time that the analogy between sea and land does not hold as a matter of course. "The situation does not appear identical, for the hospital ship ought not to fall into the enemy's hands, by the same right as an ambulance, which, being actually within the enemy's lines, is more or less involved in the enemy's arrangements."

For all that, they wished to provide for a case where Art. 4, sect. 5, should be applied. By Art. 5, sect. 5, it is only the enemy's flag that is to be hauled down, not the neutral ensign of a neutral hospital ship. According to this, the enemy's vessel retains only the Red Cross, while the neutral still displays its own flag as well.

By Art. 21, sect. 1, the signatory Powers have undertaken, in case of the inadequacy of their penal laws, to adopt or propose to their legislative bodies the requisite measures for punishing, as usurpation of military insignia, the unwarranted use of the cognisance proposed in Art. 5, by vessels not protected by this compact.

If hospital ships and their boats desire to be protected during the night they must, with the assent of the belligerent whom they attend, take the necessary measures (Art. 5, sect. 6) to insure that the painting which makes them distinguishable

[1] Prot. I., p. 73.

shall be sufficiently visible. The German proposal in 1907, was, that hospital ships should carry three distinguishing lights at night, green, white and green. It was contended during the discussion[1] that such a vessel would betray not only its own presence, but that of the warships to which it was attached. It would be better to leave it open to them whether they would make themselves recognisable by night as well as by day. Moreover, it was feared that such lights might be wrongfully used by ships of war. In consideration of these arguments finally, the carrying of lights by such vessels at night was made optional, and not obligatory, and further, it was ruled that instead of three lights being carried the distinctive painting of hospital ships should be illuminated,

Art. 6 lays down that in time of peace, as in war, all these distinctive marks may only be used for the protection and differentiation of the ships specified.

Art. 9 secures special protection and definite privileges to neutral merchant ships and other vessels which, on demand[2] or without it, are employed in taking on board or caring for wounded or sick. Such may only be seized where they have previously been guilty of breach of neutrality. If, however, a warship which summons to its aid a neutral vessel, guarantees immunity to the same, it must keep that promise. It was specially desired

[1] Prot. I., p. 73.

[2] There is, of course, no legal obligation to accede to the demand. Cf. Prot. III., p. 561.

that no more definite regulations should be framed, as everything depends upon the attendant circumstances. Yet there was no misapprehension as to the "vague character" of the clause, "Will enjoy special protection and certain immunities."

The regulations of this compact are by Art. 18 only applicable as between the Powers that are parties to it, and then only when all the belligerents are such parties. Art. 19 lays down that the naval commanders-in-chief of the belligerents are to see to the carrying out in detail of articles applying to the case, and where cases are not provided for, to act in accordance with the instructions of their Governments, and in the spirit of this Convention. Further, by Art. 20 the signatory Powers are to take the requisite measures to make known the decisions of this Convention to their naval forces, and particularly to the protected crews, and to promulgate them among the people.

As a matter of fact, the decision as to neutral hospital ships does not properly belong to the subject in question. Neutral ships are normally not subject to seizure, and we are here speaking only of exceptions, in virtue of which an enemy's merchant ships are exempt from such seizure. But, for the purpose of a connected exposition of the law of hospital ships, it was necessary to consider neutrals also. Articles of the "Convention touching the application of the principles of the Geneva Convention to naval warfare" which are not pertinent to the subject,

particularly Art. 7, 10 *et seq.*, have not been adduced at all.

IV. By ancient usage vessels with a flag of truce are immune if they carry the proper white ensign at the maintop. As we do not possess a codification of the laws of naval war similar to the "Laws and Usages of War on Land," this acknowledged axiom has not yet been formulated, as was done with regard to *parlementaires* in land warfare as long ago as 1899.

V. The proposal to exempt postal ships was made still earlier, *i.e.*, in 1888, by den Beer Poortugael,[1] in his work on International Maritime Law, and in 1896 by the *Institut de Droit International.* In previous wars, all sending of letters was not stopped, as a difference was made "according to whether or not the vessel was a regular mail ship, or, again, according to her place of origin or destination."[2] But there always resulted, at any rate, a delay in delivery. Even in the first half of the nineteenth century certain postal treaties excluded the enemy's[3] postal vessels from the law of capture, but an international settlement of the question was first arrived at in Arts. 1 and 2 of the agreement concerning certain limitations in the exercise of the right of capture in

[1] He pointed, in 1907, with just pride to the fact that for thirty years he had advocated the inviolability of communications by post.

[2] Prot. I., p. 266.

[3] Cf. Perels, "Marine Runchschau," 1903, p. 269.

naval warfare."[1] Germany was the moving spirit in this. The decision, unfortunately, does not treat of postal ships as such, but only of the conveyance of letters, and not even of packets, etc. It makes no difference whether the mails are on board the enemy's[2] or neutral ships, or whether they belong to neutrals or belligerents. Nor is any distinction to be made between official and private letters. As a matter of fact, in time of war a Power naturally does not send important news by way of post across the sea. In important matters —and there alone could the seizure be of value— it will make use of a special courier or the telegraph wires.[3] This agreement does not apply at all to mails which are sent to or from a blockaded port.

As only letter-mails are exempted, the enemy's mail steamers will be seized as before, and the neutral will be subjected to search.[4] The provision by Art. 2 of the said Agreement, that "this may only be carried out in case of need with the greatest consideration and as rapidly as possible," is a mere phrase. The very obligation of compensation will force the captor to that; but, above

[1] As a pendant to the debate on contraband. The German proposal was discussed by the "comité de contrebande de guerre."

[2] Russia was at first for having only mails in neutral ships exempted, Prot. III., p. 1122.

[3] Prot. I., p. 266. "Telegraphy and wireless transmission offer to belligerents far more rapid and sure means of communication than the post"; so also Kriege, Prot. III., p. 1121.

[4] England made the adoption of the article depend on this: cp. Prot. III., p. 1121.

all, such a method of search must be observed elsewhere also, and not only with mail steamers.

On the whole, the progress as regards letter-post must not be valued too highly. True, intercepted letters can no longer be retained. But, no doubt, postal communication will be disturbed just as much as hitherto. The enemy's mail steamers will not expose themselves to the risk of capture, and neutral vessels are, anyhow, not so trustworthy. In this decision the fear lest mail vessels should be used for other purposes has assuredly had its share. But would it not be possible that the Powers should pledge themselves to use mail ships for nothing else than the carrying of letters? Good faith and trust must flourish more and more, even in the intercourse of nations, and the advantage of such mutual confidence would be general.

VI. By some writers like Bluntschli, de Boeck and Gessner, a further exception is put forward. Ships which, owing to shipwreck, are driven on the enemy's coasts, or find themselves in peril of the sea, may put into a hostile port. Yet international law has not yet sanctioned such a distinction, and practice has only recognised the rule in isolated instances.[1]

In conclusion, and, strictly speaking, Government hospital ships, State mail boats, and vessels

[1] According to v. Ullmann (pp. 511, 512) pilot boats and those employed in the service of lighthouses are exempted from seizure.

intended for scientific and other purposes, which are State property, are by no means in their place in an enumeration of the exemptions from the law of prize, as that law only extends to private property; they would rather be more correctly classified in a list of exceptions from the maxim, "War sustains war."[1] But the distinction drawn in this essay between the handling of private and public property was not recognised in the "Agreement as to certain limitations in the exercise of the right of capture in naval warfare," and, for practical reasons, I have followed the dictates of that Convention.

[1] Even in land warfare there are, as already shown, exemptions from this principle. Thus, the prevalence of the rule is constantly circumscribed.

CHAPTER VII.

BRINGING-TO AND SEARCH.

THE enemy's warships—and, for Powers which did not join in the Paris Declaration,[1] privateers as well —have to begin with the right of embargo : *Le droit de saisie.* On the other hand, until the decision of the Prize Court is given, they have no complete right of disposal over the enemy's ship and the enemy's goods, and, above all, cannot destroy them, although they have come into their possession.[2] Yet there are also many cases in which immediate destruction is permitted, even without a legal judgment, *e.g.* :—

I. Where the ship resists being brought to ;

II. Where heavy weather prevails ;

III. Where the ship brought to is unseaworthy ;

IV. Where the vessel that has intercepted the cargo is pursued by the enemy, and particularly where recapture is to be feared ;

[1] Spain and Mexico joined in 1907. The United States, Venezuela, New Granada, Bolivia, and Uruguay still hold aloof.

[2] Cf. Perels, "D. internationale öffentl. Seerecht der Gegenwart," p. 299.

V. Where the vessel that seizes the cargo would be seriously hindered in the performance of her other duties by taking the ship in tow;

VI. Where the captor has no available men on board to bring the captive ship into safety, and her commander refuses to follow of his own accord;

VII. Where contagious diseases prevail on board;

VIII. Where the value of the intercepted vessel is so slender that to carry her away is not worth while, especially in a case where the ports into which she might be taken are very far off, or are blockaded. Thus objection can be raised to the action of the *Alabama* in the War of Secession, which, out of sixty-three ships taken, burned fifty-two and sunk one, because the ports of the Southern States were blockaded;

IX. Where the goods are liable to spoil;

X. Where the crew of the captor urgently need for their own use the goods seized.

In all these instances a document is to be drawn up regarding the destruction, giving exactly the reasons for it.

The French additional instructions of 1870 allow the destruction of vessels as quite an ordinary occurrence, "If the preservation of the prize interfered with the success of the cruiser's[1] operations." The Russian and English Prize Regulations enter more minutely into the instances in which destruction is admissible. Valois[2] mentions that in a

[1] Cf. Ovtchinnikow's speech in 1907 (Prot. III., p. 899).
[2] "Germany as a Naval Power," p. 57.

possible war between Germany and England, the German cruisers would have scarcely any chance of bringing their prizes into safety, and they would therefore be forced to destroy them. "The German zones of protection lie too far away from a probable theatre of maritime warfare. The prizes we took would thus be generally recaptured from us by the English on their way to a German port. On the other hand, England, by a deliberate policy, has for hundreds of years acquired colonies everywhere and can easily carry the prizes into one of its numerous ports. For this very obvious reason England recognises the destruction of prizes only in one single instance, *i.e.*, where the vessel is incapable of continuing the voyage. In this respect Russia is in an even more unfavourable position than Germany."

Many noted writers are of opinion that the destruction of prizes is in all cases contrary to the law of nations. Others content themselves with forbidding the sinking of neutral vessels.[1] But their view can by no means be accepted. If we retain the right of prize at all, all the corollaries must be deduced from it. Then such Powers as have no *points d'appui* near the theatre of war, must not be deprived of the possibility of exercising

[1] Cf. on this point the Hague Negotiations (Prot. I., p. 262), which, owing to the impossibility of reconciling the English and the Russo-German views, came to nothing. The London Convention on Maritime War at last in Arts. 48-54 settled this question, and permitted the destruction of neutral captures only in exceptional cases.

that right in many instances. Thus Fusinato[1] rightly declared, in 1907, "It is certain that the right to sink is only disputed in regard to *neutral* vessels." The greatest prudence, however, is to be recommended in regard to every destruction, and the American Regulations, for one, allow such a course only when there is not the slightest doubt that the vessel is lawful prize.

In order that a warship may be able to determine whether the requirements of the law of prize are present, the "right to bring-to and search" has been instituted. This course has been mainly guided, up to now, by Art. 17 of the Treaty of the Pyrenees (November 17th, 1659) between France and Spain. By that, the right of search has three aspects: the right of bringing-to; the examination of papers; and, if necessary, the search itself. The details have been variously regulated by the laws of the different countries.

As for the right of bringing-to, the warship has first to call on the suspected vessel, by a *coup de semonce* (warning gun), also called *coup d'assurance* (or affirming gun), to heave-to, and at the same time hoist its national flag. In doing so, the French Ordinance of March 17th, 1696, even declared it a breach of honour to fire this blank charge under false colours, and Art. 197 of the "Manual of Naval Prize Law" (London, 1888) defines this view in the sense that the commander

[1] Prot. III., p. 944.

may indeed pursue the vessel under false colours, but by no means fire under them.

This signal shot is not declared to be unconditionally necessary on all occasions. By English and former American law, any means is sufficient by which the ship to be searched can realise the intention of the warship. This version will no doubt become general. For as v. Mirbach[1] rightly insists, nowadays a shot is no longer to the purpose, as the parties can understand one another sufficiently without the aid of the international flag code. This idea was first expressed in the Japanese Prize Code of 1894.

Should the vessel not obey the order to heave-to, a second gun will be fired, this time shotted, which is, if possible, not to strike the ship, but to graze her so closely that the challenge shall not fail to be noticed. Not until this attempt also has proved fruitless may the ship itself be fired on. It is, however, at the option of the commander of the warship to resort to other measures before firing on the ship. The consequences of this conduct must be borne to the full by the recalcitrant ship.

Resistance by force to the lawful exercise of the right of stopping, search, or seizure, is by Art. 63 of the London Convention on naval war, in all cases visited by the forfeiture of the ship. The cargo is subject to the same treatment as that of an enemy's vessel, *i.e.*, the enemy's goods merely are taken, the neutral goods as a rule are not taken.

[1] P. 41.

For it would be going too far to make neutrals also responsible for the conduct of the captain. On the other hand, the property of the captain is impounded, and likewise that of the owner who appointed the captain.

Opinions differ as to how near the warship may approach the merchantman. By some, the distance is put at "cannon-shot," or "half cannon-shot," or "out of cannon-shot," as, for instance, in the French Regulations of 1854, and the Treaty of Friendship between Germany and Costa Rica in 1875. But there have always been more adherents of the view, especially advocated by Ortolan, viz., that the distance of the warships is to be regulated by the circumstances. Von Mirbach[1] urges particularly that the search is effected in much less time, and commerce less interfered with, if the warship may approach closely, and Wiegner[2] remarks very justly that the fixing of a particular distance is impossible, owing to the effect of wind and weather. Also, it would give a chance of escape to an enemy's ship. The manner of approach is very exactly laid down in the Treaty of 1870 between the United States and Peru. "The warship is to be at the greatest possible distance, compatible with the safe carrying out of the search. In this it has to be guided by the wind and the sea running, and the degree of its suspicions of the ship to be boarded." The Prussian

[1] P. 39.
[2] P. 260.

Regulations of 1864 and the Spanish Instructions of 1898 adopt the same standpoint.

The search of the vessel ensues by the requisition of the warship. The Prussian regulations of 1864 laid down further, in 1811, that the captain of the enemy's ship had to come on board the warship with the ship's papers. In this way, however, deception was very easy, and now it is the general rule that the warship should send a search party. The French and American Regulations lay down that this deputation shall consist of an officer and several men. On the other hand, England and Germany[1] demand in the first place two officers, so that afterwards two reliable witnesses may be forthcoming. These may wear uniform and swords, the men,[2] as a rule, not. The boat in which the search-party goes away must, by the American Regulations, not be larger than a whale-boat. There may be arms in it. It has generally to hoist the white flag, or, by the English Regulations, that of its country.

The examination of the papers[3] has two objects, to see whether there is any doubt of their genuineness, and whether they show the neutral character of the vessel, and in the second place of the cargo. A certificate, for instance, shows by

[1] As, for instance, in the treaty with Costa Rica.

[2] Generally two.

[3] Hagerup proposed in 1907 to come to an international decision as to what was to be regarded as sufficient proof of neutrality of ownership and the destination of ship and cargo.

German law the right to hoist the flag in use. If necessary a flag-warrant, the inspector's pass and other documents are enough. In addition to this, secondarily, the voyage papers are to be taken into account, the muster-roll, the custom's declarations, etc., so as to be able to ascertain the destination. Lastly, the bills of lading give information as to the character of the cargo. The American Regulations give eight papers, "which may be generally expected on board of a vessel": a bill of seaworthiness, the list of the crew and passengers the log-book, the bill of health, a specific account of the cargo, a charter-party, if the vessel is chartered, and a list of the excisable goods and bills of lading.[1] After examining the papers the searching officer, if requested, gives the merchantman a certificate of search. This has to set forth the officer's rank, his name, by what warship he is detailed, the date, and the ship on which the search took place. It further testifies that the ship's papers have shown the legitimacy of the flag flown and the neutrality of the cargo. The skipper himself enters in the log the undertaking of the search.[2] The commander of the searching vessel is likewise to record the particulars in his log, notably the name and nationality of the ship searched, the nature and result of the search, and the name of the officer who carried it out.

[1] "Law of Naval War in the United States," 1902, p. 9.
[2] Cp. Code, § 486.

The significance of recording these events may be variously interpreted. The certificate given to the merchantman by the officer of the searching-party must be regarded as a matter of international obligation. For, from the moment in which the search reveals that there is no cause for detention, the warship's action binds the Power to which it belongs to compensate for damage, and the man-of-war must recognise this obligation by immediately drawing up the certificate. Should it decline to do so, such conduct would be tantamount to a declaration that it was unwilling to compensate.

Less significance attaches to the respective entries in the ship's logs. The neglect of them can only be punishable by the laws of the country. It has possible unpleasant consequences, however, in connection with the proof of the damage resultant at a subsequent hearing before the Prize Court.

Should serious suspicion arise that the papers are forged, the warship has the right of search. Some writers, as, for instance, Hautefeuille, are for recognising such a right only on the territorial waters of the belligerents and not on the high seas. Nay, they go so far as to limit the right of inspection to the papers which establish the nationality and would limit the examination of the papers which relate to the cargo, to cases in which the ship is bound for a hostile port. Spain, in its Regulations of 1898, gave its adherence to this view. Yet this conception cannot be characterized

as the right one. How easily the papers can be forged![1] Wherever there is a solid and well-founded suspicion, search must be conceded. Various countries have also laid down definite rules as to the method of search. For the most part search can only be undertaken by the captain of the ship in question and his crew, of course, under the eyes of the visiting officer. This is laid down, *e.g.*, by the French and Japanese Regulations. By the Prussian Law of 1864, and English Prize Law the search is carried out by the boarding officer and his boat's crew. In none of these cases, however, is he allowed to open closed spaces. That may only be done by the captain of the vessel itself.

Of course, the suspicion of falsification of the papers is not the only ground which justifies a search. The possible conditions of such a course cannot be fully enumerated.[2] A decision is rather to be arrived at by the commander according to the circumstances of the particular case. The *Institut de Droit International* declares that in the following cases sufficient grounds for suspicion are present :—

I. Where the merchant ship has not hove-to at the summons of the warship ;

II. Where the vessel has resisted showing its papers ;

[1] Cf. Liepmann, "Zeitschr. für Int. Pr. u. Oeff. R.," Vol. XVII., p. 331.

[2] Cp. "Actes," pp. 374, 375.

III. Where it has duplicate, forged, false, secret, or imperfect papers;

IV. Where the papers have been thrown overboard or destroyed, especially where this has taken place on the approach of the warship;

V. Where the ship brought-to sails under false colours.

By the English Regulations the captain of the neutral ship has the right, immediately before the examination to enter protest against its taking place, a matter to which the examining officer is bound to draw special attention.

An exception to the law of search is the law of convoy, which first received international definition by the London Naval War Convention after the fruitless endeavours of the Second Armed Neutrality Convention. By Art. 61, neutral ships under the escort of a war pennant are exempt from search. The commander of the convoying ship must give the commander of a warship of one of the belligerents, at his request, every information as to the nature of the goods and the cargo, the obtaining of which would result from the search. This information is to be furnished in writing, "because that prevents equivocation and misunderstanding, and more definitely places the responsibility on the commander."[1] Should the commander of a belligerent's warship have reason to suppose that the commander of the convoying ship had been deceived, he imparts his

[1] "Actes," p. 372.

reasons for suspicion to the latter. In that case, by Art. 62 of the said Convention, the verification rests with the commander of the convoying ship alone. Whether an officer of the hostile cruiser is to be brought in for this purpose is for the commander of the convoying ship to decide as he thinks best. He must record the result of the verification in a report, a copy of which is to be handed to the officer of the hostile warship. If the facts so recorded should, in the eyes of the commander of the convoying ship, justify the seizure of one or more of the convoy, he must withdraw his protection from such.

The following further international standards obtain in regard to taking captured vessels: Firstly, the commander of the captor ship is responsible for the preservation of the prize, and particularly that nothing be removed or damaged. Care has also to be taken that the prize is handed over to the Prize Court as far as possible in the same state as it was at the time of capture. To this end the commander, calling in officers, is to draw up an exact inventory and to secure the ship's papers in a sealed wrapper. This applies also to cases in which the ship has to be sunk. In that state it is, as the American Regulations notably prescribe, to be viewed, estimated, and taken stock of by as many competent and impartial persons as can be brought to the spot, and a report thereon is to be sent in to the Prize Court before which action is to be taken.

Prizes sail by general usage under the battle ensign of the capturing Power. Perels[1] expresses the opinion that the use of another ensign for purposes of deception, notably the avoiding of recapture, is not contrary to the law of nations. The Austrian Regulations lay down the following as to the colours to be flown by prizes: "On board a captured ship flying the enemy's flag, the national (Austrian) flag is at once to be hoisted at the peak with the enemy's below it. A similar vessel under neutral colours, on the other hand, retains the same until it has been legally declared lawful prize. As a sign, however, that it is in the hands of the Imperial Navy, the imperial ensign may be hoisted at the fore-top." The Maritime Law of the United States forbids in general terms the use of false colours.

Appropriation on the basis of judicial decision may only ensue where the belligerent Power has not first lost its hold of the vessel, either by its freeing itself, or by the enemy's having torn it from its clutches by force of arms (*reprise*, *recousse*). This axiom, first maintained by the *consolato del mare*, has been advocated among experts by Grotius, Pufendorf, Bynkershoek, Vattel, and others. On the other hand, in certain countries the "rule of twenty-four hours" is recognised by which even such a brief retention implies the acquisition of ownership of vessel and cargo. Special difficulties

[1] P. 298.

of interpretation arise where several recaptures follow one another (*rescousse*, or *recousse*).

In certain countries since the end of the seventeenth century so-called redemption (*rançon*) by the enemy is customary, and even writers like Phillimore and Gessner regard such a compact as permissible. Yet most Powers rightly do not recognise such redemption. For the object of the right of prize is the destruction of the enemy's commerce and by compacts permitting redemption, what is mainly attained is enrichment at the expense of the enemy. This is also deducible from the remarkable fact that in England, for instance, the captors are allowed to insure their interest in the captured ships.

The prizes are, as a rule, to be brought for adjudication to the nearest home ports where a Prize Court sits. Under certain circumstances, however, a ship and its cargo may be at once applied to its own purposes by the captor State, should the necessity of war demand it. In that case, however, the Prize Court must at once be informed.

By Art. 10 of the "Agreement concerning the rights and duties of neutrals in case of war at sea" (1907), a warship which is carrying off a prize does not violate neutrality by passing through neutral territorial waters. Witness Renault's report[1]: "It by no means deprives a neutral Power of the right to prevent all passage of belligerents

[1] Prot. I., pp. 304, 305.

through neutral territorial waters, nay, more, the mere passage under normal circumstances might not be regarded as in itself a breach of neutrality."

A prize may never be taken into a neutral harbour. Otherwise, by Art. 22 of the above-mentioned agreement the neutral Power must bring about the releasing of the prize. Several Powers wanted in 1907[1] to place prizes on a level with ships of war and grant them a brief sojourn in neutral ports. But, in the end, the opposite view prevailed, with two important exceptions.

Firstly, by Art. 21 of the said agreement, prizes may be taken into a neutral port on account of unseaworthiness, because of adverse weather or want of fuel or provisions. But even in these cases they must put out again as soon as the cause which forced them to put in is removed. If they do not put out of their own accord, there ensues a summons to do so from the neutral Power, and in case of non-compliance the forcible ejection of the prize with her officers and crew, nay even the seizure of the prize-crew put on board by the captor.

Next, by Art. 23, a neutral Power may not refuse prizes entrance into its ports, if they are brought there for safe-keeping until the Court arrives at a decision. But it can also have the prizes taken to another port.[2] If the prize is convoyed by a

[1] Prot. I., p. 320.

[2] "With a view to preventing the inconvenience which might be caused in a small port," as v. Beaufort suggested particularly with regard to colonial harbours. Prot. III, p. 637.

warship the officers and men placed by the captor on board the prize have the right to proceed on board the convoying vessel. If the prize voyages alone, the crew placed on board by the captor is to be allowed to go free.

In formulating this last Article the object was "to lessen, if not to prevent, the destruction of prizes."[1] Where a belligerent Power, owing to distance or other causes, cannot carry a prize into a home port, and would be forced to sink it, the prize is to be allowed harbourage in a neutral port. This article, however, must not be taken to mean also that the neutral Power must in all circumstances allow the prize to put in; on the contrary, that is a matter for its own decision. But if it grants entry to a prize under the stipulations named, no breach of neutrality is to be found in such action. In spite of the strong opposition of England this clause was passed, but only in 1907. Van den Heuvel,[2] the Belgian, pointed out with great eloquence the importance of the clause "which would be a first stage, warranting the hope that two great reforms, the prohibition of the destruction of neutral prizes and respect for the enemy's private property at sea would some day eventuate." It cannot in truth be denied that Art. 23 may yet acquire paramount importance. As almost all the Powers have given their adherence to it, in case of war, they will act accordingly, and the

[1] Prot. I., p. 320.
[2] Prot. III., p. 481; I., p. 321.

sinking of prizes will thus probably become much rarer. For that matter it exempts not only neutral but hostile vessels from being sunk. In the protocol in 1907, it was expressly laid down that the Prize Court mentioned in Art. 23 meant the national and not the international tribunal,[1] so that even the Powers which voted against the "Agreement as to the establishing of an International Prize Court" can accept Art. 23.

In all cases the neutral Power must, in accordance with Art. 9 of the "Agreement as to the rights and duties of neutrals in case of naval war," apply equally to both belligerents, the conditions, limitations or prohibitions touching the admission to its harbours, roadsteads, or territorial waters of prizes made by them.

The great want of clearness which, as I have shown, prevails on many points of the law of bringing-to and of search would be best removed by international definition. It should not be difficult to arrive at some agreement, as it is mainly a question of purely formal acts. Then at last, in place of the many National Prize Regulations, one International Code would be framed, and the cause of many disputes between nations removed from the world.

[1] Prot. III., p. 651.

NECESSITY FOR THE ABOLITION OF THE LAW OF PRIZE AT SEA.

CHAPTER VIII.

REASONS FOR RETENTION OF THE LAW.

THE glory of having always upheld the idea of the inviolability of private property attaches to the United States. They have always remained true to that principle since they first enunciated it in 1785 in their famous treaty with Prussia. It is, however, true that they have never been able to apply the principle in practice, because their opponents in war have not consented to forego the right of prize. When the abolition of privateering was declared in 1856, Marcy, the American Minister for Foreign Affairs, issued that famous declaration in which he made America's adherence dependent upon the total abrogation of the right of prize.[1] Recently America has endeavoured, both at the first and second Hague Conferences, to do away with the right, and supported its proposal

[1] Cf. on the endeavours of America to abolish the right of prize, particularly the speeches of Choate and Barbosa in 1907, also White, "My Life as a Diplomat," pp. 370 *et seq.*

by explicit memorials. Unfortunately many of the Great Powers adopted an adverse attitude towards this endeavour. In 1907 the following were against the American proposal: France, England, Japan, Russia, Spain, Mexico, Colombia, Montenegro, Panama and San Salvador. Chili refrained from voting,[1] Germany and Portugal were in favour of the adoption, on condition that the questions of contraband of war and blockade were decided first, which is what actually took place in London in 1909.

A great number of reasons adduced in support of the right of prize will not bear even a superficial test.

I. Merely on account of its peculiarity let me first quote one of the contentions repeatedly made by writers of an earlier day. Grotius, for instance, quoted what the Bible relates as to God Himself having allowed and bidden His people to smite their enemies and take all that was theirs, and appealed further to the numerous testimonies of Greek and Roman authors.

II. We take Grotius more seriously when he says that the combatant has the right as victor to demand compensation from the vanquished foe for the expenses and losses caused by war. This view, however, stands in contradiction to the modern conception that the expenses of war may be imposed upon the hostile State, but certainly not on hostile individuals.

[1] Cp. Prot. III., pp. 834—835.

III. The Englishman Wheaton regards prize as a kind of contribution : in Tetens' view it has the nature of a war-tax. But these conceptions cannot be retained owing to the point of view adopted towards contributions and the like to-day. For how are they to justify the seizure of all the ships by comparing it with contributions? In war on land contributions are levied only to meet wants, but when a ship is seized in naval warfare that principle is not observed. Besides, in contrast to the regulations of the law of prize, compensation ensues in the case of contributions. In passing it should be remembered that in naval warfare also contributions and requsitions may be levied in seaside towns.

IV. Some defenders of the law of prize contend that war should be made as terrible as possible, so that it may end the sooner, and that, therefore, the right of prize should be retained. This view was supported in 1907 by Renault, Larreta, Fry and Satow, among others.[1] Barbosa, Choate and Foster rightly insisted, on the contrary, that the Paris, Geneva, St. Petersburg and Hague Conventions aimed at a mitigation of the cruel customs of war, and that the barbarities which they abolished had been abolished in order to frighten the nations out of war, or to end it more speedily.[2] Moreover, it has not yet been proved that the law of prize

[1] Cp. Prot. III., pp. 793, 800, 810, 832.

[2] Prot. III., pp. 763, 785, 803. Cf. also, Schlief (pseudonym for Shafter), "Hohe Politik," p. 42, 2nd edition, 1902.

really leads to a material curtailment of war. Without such proof—which, as will be shown later, cannot be given—that theory breaks down. The American Rose,[1] on the contrary, especially with reference to the predatory wars of Louis XIV. and the struggle of the Netherlands for independence, showed in 1907 that wars had often lasted longer the more fiercely they were waged.

V. Fried[2] and others adopt the standpoint that the dread of the confusion brought about by prize at sea will be a deterrent from war, and thus the retention of the right can only be conducive to peace. This conception, which was also upheld at the Hague[3] in 1907 by Nelidow, Renault, Larreta and others, is wholly erroneous. It cannot be contended that under present-day conditions, where modern Governments only have recourse to wars in cases of absolute necessity, the mere thought of the crippling of commerce will exercise a decisive influence. War always brings many evils in its train, and it is untrue to maintain that the injury to commerce can be accounted one of the worst of these. A nation offers a far heavier and more costly sacrifice to its honour in the many thousands of its youth who fall in battle, and the possibility of sullying the fame of its forefathers by its defeat in the struggle will admonish every people to be prudent, and to take the sword in hand only in defence

[1] Prot. III., pp. 796 *et seq.*
[2] Second Hague Conference, p. 213: "Friedenswarte," 1907, pp. 122, 123.
[3] Prot. III., pp. 765, 793, 810.

of its highest interests. Should it really be regarded as possible that a Government could abstain from war, not because of the possible slaughter of so many human beings, but because of the imperilling of its commerce? If a nation enters on a war, it reckons with the fact that the flower of its youthful manhood will fall, and such material considerations as the unhinging of commerce cannot carry weight in comparison with those great issues of life and honour.

Similarly, the argument that the continuance of the law of prize will induce traders to use their best endeavours to prevent war cannot be accepted. In contradiction to this, Choate aptly observed in 1907,[1] "Commerce and business are always hostile to war, but they have little influence either to provoke or prevent it. The need of avenging the national honour, accidents, the passion and thirst for conquest, the redressing of alleged wrongs, such are the causes that lead to war, and the commercial interests which it compromises have seldom, if ever, availed to avert it." Further, the same American diplomatist pointed out with great justice, in answer to the above-mentioned contentions, that many nations had been prompted to wage war by the desire of destroying their enemy's trade, especially when they had a small mercantile marine, and an opportunity of inflicting damage on the opponent by means of a few

[1] Prot. III., p. 764; so also the American Rose, Prot. III., pp. 797 *et seq.*

cruisers. This was demonstrated, for instance, in the War of Secession.

VI. Here and there the view was also upheld that the enemy's ship must be seized because it might be used for military purposes. This was especially dwelt on by Count Caprivi in the German Imperial Parliament in 1892. As a matter of fact, it is true that all the seafaring Powers have respectively made agreements with their great shipping companies to turn ocean-going steamers into cruisers. The English and other Governments grant subsidies to their companies on condition that even in building vessels consideration is given to their prospective transformation.

Section 23 of the German Law of June 13th, 1873, as to Military Contracts, says that shipowners must place their ships and vessels at the disposal of the military authorities for war purposes from the day of mobilisation. The Hamburg-American Line, *e.g.*, had its fastest liner, the *Deutschland*, built expressly as an auxiliary cruiser, and her armament lies always in readiness. Besides this, five vessels of the North-German Lloyd, with more than 18 knots' speed, are fitted as auxiliary cruisers. As against these six ships of the German companies, England has twenty-seven at her disposal; the United States, six; France, five; and Russia, four, of like speed. Vessels of less speed can, of course, be used as auxiliaries, though in this case obviously only for such subsidiary military purposes as the carrying of men, ammuni-

tions and supplies, scouting and hospital duties and use in guerrilla warfare against the enemy's commerce.[1]

Touching the rules to be observed in transforming merchant ships into warships, a special agreement was arrived at, at the Hague, in 1907[2]: but it neither settled the question of whether such transformation might take place on the high seas, nor whether merchantmen so transformed might during the course of the war be re-transformed into merchantmen. Even the London Conference on Naval War[3] was unable to arrive at any conclusion on the point. Let us mention here also Art. 5 of the "Compact as to the treatment of the enemy's merchant ships on the outbreak of hostilities," by which no period of grace is granted to ships "the structure of which makes it plain that they are intended for transformation into ships of war," and Art. 8 of the "Compact concerning the Rights and Duties of Neutrals in War at Sea," which runs as follows: "A neutral Government is bound to employ the means at its disposal to prevent within its suzerainty the equipment or arming of any vessel as to which it has valid grounds to suppose that it is intended for cruising or participation in hostile undertakings against a Power with which it is at peace. It is

[1] Cf. also the arguments of Bars in "März," 1907, p. 403.
[2] Cf. also v. Ullmann, pp. 506, 507.
[3] "Actes," pp. 340, 341.

further bound to use the same supervision to prevent any vessel intended for cruising or participation in hostile enterprises, and that has been wholly or partly equipped for military uses within its jurisdiction, from leaving its jurisdiction.

But all this is far from justifying the seizure of the enemy's mercantile marine. At the beginning of a war every Power will detain in harbour, without exception, precisely those ships which count in naval warfare, and will never let them reach the high seas. It therefore stands to reason that, broadly speaking, no ships which put to sea after the outbreak of war are in any way used for such purposes by the Power controlling them. Armed merchantmen, however, can be seized by the enemy even without applying the law of prize. To this it cannot be objected that ships are mostly out of port on the outbreak of war.

The distance to America, for instance, to which steamers sail regularly, is not so great but that a Power would have an opportunity of summoning such ships to return on the approach of war. Besides which, is the value of merchant ships turned into men-of-war really so great as to justify the destruction of an enemy's seafaring trade in order to obviate their transformation? Is it not, moreover, quite a matter of course that much fewer merchantmen will be turned into auxiliary cruisers if the right of prize is abolished? For in that case the great shipping companies can ply their trade on a larger scale, and the State, out of consideration to

the trade of the nation, will not take from them so many vessels. Much care has recently been given to the construction of special men-of-war for the above-mentioned subsidiary purposes,[1] so that in the near future assistance of this kind from the merchant service will be a negligible, or less considerable, factor.

In order that the possible transformation of merchantmen into cruisers might be no reason for abrogating the right of prize, Holland, in 1907,[2] made the proposal that only ships which carried a certificate from their country of origin that they would be put to no military uses should enjoy exemption. But this met with no acceptance because the advocates of the right of prize are moved by considerations quite other than the use of merchantmen as cruisers.

VII. To justify the law of prize many authors adduce the fact that in time of war ships often play the same part as railways, *i.e.*, carry coals and the like. If, therefore, it is permissible in land warfare to seize railways, that must also be the case in war at sea. But this conclusion is not correct. It is only necessary to remember that on land there are quite other possibilities of conveyance than railways, which merely represent the quickest method of transport and the one most suited to war. But for traffic at sea carriage by ships is the only means available. How different is the effect of the

[1] Cf. v. Halle, "Mercantile Marine and Navy," p. 41.
[2] Prot. III., pp. 810 *et seq.*

impounding of railways and of ships! Moreover, it is not permissible to defend the law of prize on the plea of the slight possibility of some merchant ships carrying coal, etc., to the fighting fleet. The advantage which accrues to the enemy's fleet by the conveyance of coal is too small in comparison with the great injury to commerce. Bonfils[1] is therefore wrong when, asserting this reason, he declares pathetically: "What more is needed to justify the law of prize?" It must also be considered that in war on land only the seizure of the railways is permitted, and they must be restored when the war is over. How then can the seizure of ship and cargo be defended?

VIII. Numerous writers, such as Hautefeuille, Ortolan and Westlake, justify the seizure of ships by the argument that by capturing the crews the enemy is weakened. This defence is futile. The two things are entirely separate. Also we must object, with Geffcken, to the contention on the ground that the recruiting of merchant sailors for the Navy is probably more successful when the mercantile marine is forced to lie idle than when, as before, it subserves commerce and traffic. But recently this objection has been invalidated, thanks to Art. 58 of the 1907 "Compact as to certain limitations in the exercise of the right of prize in naval war." For these lay down that the crew of the enemy's ship may not be made

[1] No. 1,331

prisoners of war.[1] With regard to citizens of neutral States, Art. 5 lays down that the men are to be set free at once, but the captain and officers only when they have given a formal written undertaking not to take service during the war on board any ship of the enemy, whether merchantman or man-of-war. To my mind, this decision is not quite in order. The neutral officers should be forbidden also to take service in the army of the enemy. Satow very rightly declared, in 1907,[2] that "such officers must not enrol themselves under the flag of a belligerent." I believe also that unless there is a desire to observe only the letter of the compact, there will be no warrant for the assumption that this article allows neutral officers to enter the enemy's land forces. Hence the written undertaking extends to that as well. That this prohibition also includes service on board the enemy's merchant ships is explained by the endeavour to injure the enemy's commerce as far as possible. It was at first desired that a similar pledge should be exacted from neutral crews also, but this was at last relinquished because, as Fromageot's report[3] says, the sailors would often be unable to realize the extent of such a promise, and also because its enforcement would be too difficult. It was at first

[1] Up to 1907 the making prisoners of the crew, as is also insisted on in Prot. I., p. 26, was not unlawful. This is contrary to Fitger, "The Reflex Effect of the War in East Asia on International Law," p. 21, but must be maintained.

[2] Prot. III., p. 959.

[3] Prot. I., p. 268.

desired that an oath should be exacted from the officers. But this rule could not have been carried out in practice in view of the variety of usages in the various countries. It is, of course, open to the capturing Power to recruit the neutral officers or men for its own Navy.[1]

In the case of subjects of hostile Powers, by Art. 6 an assurance is demanded of the men as well and the promise must in this case be to the effect that during the continuance of hostilities they will not accept any military duties connected with military enterprises. Fromageot's report enumerates among military enterprises "embarking on board a ship of war, service on land in arsenals or land forces, or any other services, military or naval." The enemy's men and officers are not forbidden to serve on board his merchant ships, because that would deprive them of their means of subsistence. This humane consideration overcame the principle of injuring the enemy's commerce to the utmost. The non-extension of the prohibition to this instance lends the article its high practical significance. The protocol makes special provision for cases in which a seaman is unable to write. His undertaking is then to be set down in writing before witnesses of his own nationality and in presence of the captain. Particulars of this instance were not included in the regulations.

Fusinato and Satow proposed in 1907[2] that in

[1] Prot. III., 960.
[2] Prot. III., pp. 958 *et seq.*

accordance with the rules of land warfare officers and men should be released on parole, but detained if the laws of the hostile Power did not allow them to give such an undertaking. This proposal fell through. Kriege drew attention to the fact that States with such laws as, for instance, Austria-Hungary, would then be worse off, since their subjects would not be released. These States, however, would, if they wished to enjoy the benefit of that decision, alter their legislation. It would therefore have been best if they had pledged themselves in that year to abolish the prohibitions concerning the taking of an oath, as far as they still obtained, as well as not wittingly to employ the released individuals for purposes of war. As a matter of fact, only the latter was laid down in Art. 7, sec. 2, of the said compact. With regard to neutrals, it should be noticed that the control of the hostile Power includes the stipulation that they shall accept no service on board merchant ships. For particular States which exercise no supervision over shipping companies, the carrying out of this decision presents difficulties.

If the above proposal of Fusinato and Satow had passed, we should have had the same state of the law with regard to prisoners on board an enemy's merchant ships as to prisoners of war on land. They could be released only if the laws of their native country did not stand in the way. According to the new decision, however, a belligerent, as soon as the information reaches

him, is forbidden to employ even such individuals who, having violated the prohibition either through ignorance or obstinacy, are released in contravention of the laws of their own land. This is contrary to reason. The rules of land warfare as to the release of prisoners are legally stricter, and do not admit this possibility, because the releasing Power will definitely know whether the Power opposed to it allows release on parole. The decision of 1907 should therefore have been extended to the enemy's subjects on board merchant ships.

If the enemy may not "wittingly" employ those released, he must, of course, know the names of the persons concerned. Hence in Art. 7, sec. 1, of the said Compact the obligation was laid on the capturing State to inform the hostile Power of the identity of those released. Here the possibility arises that owing to some circumstance or other the hostile Power may not learn who are released, because the information in question goes astray, or the captor State forgets to transmit it. Is the hostile State at once to believe those concerned if they declare they have pledged themselves to perform no more military duties? It is to be presumed that the State must in such a case first seek information from the enemy. An exception is permitted in the case of the officers, in whose declaration implicit confidence may be placed.

Ph. Zorn considers[1] it doubtful whether States may be parties to such a conditional release, and

[1] *Ibid.*, pp. 201 *et seq.*

to the prohibition of the employment of such crews, because they cannot forego the valuable support of those in question. The answer to this is that men of the mercantile marine are unfit for service in the fighting navy. If, then, the Powers were, without exacting any assurance, to forego the hitherto acknowledged right of making the men prisoners, they would indirectly augment the fighting strength of their opponents, and they cannot therefore be asked to grant unconditional release. Still, we may be glad to have attained so much progress, and to remember that the conditional release of the men is at least better than keeping them prisoners. The former, at any rate, is more in accordance with humanity. Besides, the officers and men, in so far as they do not belong to a neutral state, will be convoyed to the merchant ships of the hostile Powers.

From another point of view—particularly in comparison with the usual principles of war—one must, however, plead that the men should be released unconditionally, because war is carried on only with the organised troops of the enemy, and merchant crews form no part of these. Let us just think what the strict carrying out of the idea would mean! Every able-bodied, peaceful foreigner[1] might, with equal justice, be forced during a war never to fight against the country

[1] In this connection let me mention a proposal of Japan, not adopted in 1907, by which all peaceful inhabitants of the hostile State might have been interned in case of military necessity. Cf. Prot. III., p. 114 *et seq.*

in which he lives. Fromageot[1] also protests, "It has been criticised, by drawing attention to the severity of treating as prisoners of war, private citizens who take no part in hostilities and most of whom are poor, whose hard calling is their only livelihood, and who deserve as much consideration as foreign private citizens under arms and standing on the enemy's ground."[2] Nevertheless, it seems judicious first to content oneself with the immediate successes, and to try one's hand later on at the principle of unconditional release.

Further, let it be particularly noted that in 1907 the proposal not to keep as prisoners the men and officers of merchant ships emanated from England. Yet the intention was only to except neutrals. It was only at the prompting of Belgium that the ruling was extended to the subjects of hostile Powers.

It is quite natural that the decisions of Art. 8 as to making prisoners of the men have no application to the ships which take part in hostilities. An enumeration of the acts which constitute participation in hostilities was not attempted at the Hague, and the decision thereupon was left to the free judgment of belligerents. England wished to have auxiliary cruisers which convey coal and the like included among such ships. But Germany and France in particular opposed this. After

[1] Prot. I., p. 267.
[2] Prot. III., p. 986.

lengthy debates the question was finally left undecided.

The rule already mentioned, that hospital ships are excluded from seizure also bears no application to the wounded, sick or shipwrecked on board such ships. So decides Art. 12 of the "Compact concerning the application of the principles of the Geneva Convention to war at sea." Yet we shall, let us hope, some day arrive at exempting these also in the same manner as the hospital staff in accordance with Art. 10 of the last-named compact, because the transferring of the sick from the hospital ships to the enemy's cruisers is very dangerous, and the wounded are thereby removed from the care of their countrymen. Yet in this instance it is not a question of peaceful seamen, but of sailors and officers of the hostile Navy, and the enemy would injure his interests if he gave those concerned the chance of further fighting against him.[1]

As making prisoners of the ship's crew is now forbidden, we need not more particularly refute Hautefeuille's argument, based on other premisses, than has already been done above.

IX. Equally untenable is the view frequently urged,[2] that war on commerce is the most effective resource for the weak. In the further course of

[1] Prot. III., p. 565.

[2] At the Hague in 1907 by Triana, the representative of Colombia.

this dissertation proof will be adduced that such warfare can never bring about a decisive result, but at best only small minor effects. How then should the weak Powers in particular reap any great profit from it ?

It has been shown that the numerous reasons already adduced for the retention of prize at sea are untenable, and it is not worth while to dwell on them longer, even though it is just those reasons that are set forth at especial length by most writers.

CHAPTER IX.

REASONS FOR ABOLITION OF THE LAW.

THE only argument pertinent to our question that is advanced by those who would retain the right of prize at sea is the great effect which they ascribe to the destruction of an enemy's commerce as a means of ending a war. If, therefore, the right is to be abrogated, proof must be given that its effect on the issue of a war is not in the remotest degree so great as is often maintained.

To this end, let me be allowed first to point to the results which the establishment of the principle, "Free ship, free cargo" has had on naval warfare. For thereby it has become possible for the entire commerce of a belligerent Power to pass into the hands of neutrals.

Let us, for instance, first leave out of account the possibility of a blockade. Can there be any doubt that the commerce of a nation is secure from destruction by reason of the decision that an enemy's goods may not be seized from a neutral ship? If the law of prize was intended to destroy the enemy's commerce, then the adoption of the maxim, "Free ship, free cargo," was a violation of that principle, or international

declaration that this should be the first step towards the abrogation of that ancient right. By the exercise of the right of prize, as apart from recourse to blockade, it is nowadays impossible to exclude a country from seafaring trade. For neutral States are in any case certain to have enough ships left to obtain desired goods for both belligerent Powers. Since the belligerents have no choice but to employ neutrals, the prices for the conveyance of goods will rise and the neutral Powers, merely from the incentive of gain, will willingly take over the trade of the belligerents. It is, moreover, by no means requisite that the seafaring trade should be carried on to its former extent. For wars now, as experience teaches us, do not last nearly so long as they did, and the supplies still on hand in a country mostly suffice for a considerable period. Should a war for once last longer, there would doubtless soon be fresh ships built by the neutral States, if those already at their command were insufficient. Geffcken[1] expressed himself very aptly on the point. "The Declaration of Paris is an untenable half-measure. While it exempts neutral goods and vessels from seizure, in every war it throws the trade of the belligerents into the hands of the nations that are not endangered."

No serious doubt can be entertained as to the ability of neutrals to take over the commerce of belligerents. Bear in mind simply the fact that when it was necessary to convey considerable

[1] H. H. IV., p. 597.

bodies of troops in 1900, the Hamburg-American Line and the North-German Lloyd, prompted by patriotism, were able in a very few days, at the height of their busy season, to place many of their largest vessels at the disposal of their country for the expedition against China.[1] If the great German Companies are thus at all times in a position to offer a portion of their liners from ideal motives, then assuredly the neutral States of the world will be able in time of war to set free a portion of their mercantile marine, when it is a matter of earning money. Schroedter[2] mentions that at the time of the Boer War foreign flags strove very hard indeed to win the control of British sea-borne trade. When the Russian Fleet in the winter of 1904–5 made its way from the Baltic harbours by the Suez Canal to the seat of war, the Hamburg-American line was amply able to supply the whole squadron with coals, though the task was quite suddenly laid upon it.[3] As Niemeyer[4] mentions, Japan, in the same war, turned over a portion of its shipping work to neutral companies, particularly American and English. In 1899 at the Hague, the American delegate, White,[5] pointed to the fact that during the War of Secession half a million tons of American merchant shipping sailed under the English flag.

[1] Thiess, "Die Hamburg-Amerika Linie," p. 36.
[2] P. 36.
[3] Thiess, *ibid.*, p. 36.
[4] *Deutsche Jur.-Zeitung*, p. 41.
[5] Meurer, *Kriegsrecht*, p. 268.

How soon it was realised that the Declaration of Paris was the first step towards the total abolition of the right of prize may be seen from the fact that Phillimore characterised the Declaration as injurious to his country. As a matter of fact, the attitude of the English, who gave their adherence to it in 1856, and now do not wish to abide by the results of their attitude, is peculiar.

Bonfils,[1] however, is of opinion that this deduction entirely overlooks the law of blockade. An enemy's goods cannot, even if they are stowed on board a neutral ship, make their way into a blockaded port, and would be stopped by the enemy's cruisers. This is absolutely right, in so far as the blockade is fully sufficient to damage the enemy's commerce.[2]

Yet Bonfils leaves out of consideration the force of Art. 4 of the Declaration: "The blockade, to be binding, must be effectual, that is, maintained by a force sufficient really to bar access to the enemy's littoral."[3] This proviso that it must be effectual, makes it, in fact, very difficult for the assailant to bar all the enemy's coastline. For instance, in a war between France and England, neither all the French nor all the English coast-lines could possibly be blockaded. In aiming at that the two fleets would have to scatter so much as to incur the risk of being destroyed in

[1] Nos. 1327 and 1328.
[2] In the same way, White, 1899, and Meurer, p. 268.
[3] So also Art. 2 of the London Convention on Laws of Naval Warfare.

detail. Possibly a blockade of the German coasts by England, or several other great maritime powers, is conceivable.

Even supposing, however, that such a blockade came about, the possibility of starving out the country so menaced would not exist. The tremendous development of the means of communication on land ensures that the more necessary commodities can always be brought in by a land route.[1] For how few countries but England—the blockading of which is impossible—are so cut off from all contact with others that they can only import by sea!

Thus Valois,[2] for instance, says that England, in a war with France, would never be able to prevent the latter's intercourse with the five adjoining countries, and that in any case it could not possibly force France by such privation into humbly suing for peace.

The relative proportion of the exports and imports of the various countries, both by sea and land, is shown in the following table for the year 1901.[3] According to this, the external traffic was represented in value as follows:—

		By Land.	By Sea.
England	Imports	—	100 per cent.
	Exports	—	100 „
France	Imports	31 per cent.	69 „
	Exports	35 „	65 „

[1] So, also, Barbosa in 1907, Prot. III., p. 783.
[2] "Seemacht, etc.," pp. 27, 29.
[3] Cf. Schroedter, pp. 32, 33.

		By Land.	By Sea.
Germany	Imports	40 per cent.	60 per cent.
	Exports	50 „	50 „
Russia	Imports	45 „	55 „
	Exports	26 „	74 „
United States	Imports	6 „	94 „
	Exports	9 „	91 „

This shows plainly that the various Powers would be quite unevenly affected by a blockade. Let it then be noted that precisely those countries which, next to England, obtain most products by way of the sea, viz., France and the States, have such extensive coastlines that their blockading seems scarcely possible. Especially with regard to the latter is this at once obvious.

If we look at Germany in particular, she obtains 60 per cent. of her purchases by sea. It should be noticed here that this proportion includes very many products not essential to life. For Germany herself supplies her demand for cattle, and more than 80 per cent. of that for grain. Let us further take into consideration that in case of war, assuredly more than a mere 40 per cent. could be brought into Germany by land, and, moreover, in time of war foodstuffs become so dear that the supply stored in the country, or flowing into it, would be used more sparingly, and, therefore, last longer than usual, and at the same time the production of the most essential means of subsistence could, by a supreme effort, be somewhat increased for a short time. So that it will be seen

that the starving out of a country like Germany by means of a blockade is chimerical.[1]

Thus we see that not only the law of prize but of blockade as well is based on obsolete conceptions, the overcoming of which will be the task of the present century. Though the law of blockade is not under discussion here, its connection with the law of prize, upon which the Englishman Satow very rightly insisted in 1907, made it necessary that it should be briefly reviewed.

It might further be contended that the destruction of the mercantile marine would produce widespread depression, owing to the economical disturbance of the country involved, and would thus conduce to the enemy's getting the mastery. The retort to that, however, is that in reality the destruction of a mercantile marine is impossible. At the beginning of a war the ships that are in the enemy's harbours have, for the most part, the opportunity of placing themselves in safety. In practice, the exercise of the law of prize results only in the paralysation of the enemy's commerce. The number of ships actually seized is always relatively small. Niemeyer says quite rightly[2] as a corollary to the experiences of the Russo-Japanese war that the law works principally as a preventative, *i.e.*, that not the loss of the actually captured material, but the scaring away of commercial

[1] Vice-Admiral Galster (retired) takes the same view in the "Tag," 1909, No. 119.

[2] *Deutsche Jur.-Zeitung*, 1905, p. 41.

traffic by the risk of seizure is the salient point. In this direction naval warfare, so long as one party has not gained the entire command of the sea, militates against both parties. In particular, the raising of the insurance rates, even for freight on board neutral ships, in so far as they are bound for the enemy's ports, greatly injures the combatants.

After these arguments, it is not conceivable that a war at sea can be decided by the application of the right of prize. For in the application of the international principles now obtaining, there exists no means of wholly cutting off supplies from the enemy. A country cannot be starved out by the right of prize, and its only result is that a great number of individuals are robbed of their property.[1] The success and prosperity of a countless number of traders will be undermined, but the enemy himself will not be forced into peace. For when the honour and existence of a nation are at stake, the Government cannot consider individuals, and conclude peace in order to please them. War will still be carried on without regard to the baneful results of prize-making.

This idea was dwelt on in 1899 at the Hague by the American representative, White.[2] "Nowadays the transit of goods by land is so far developed that the cutting-off of the transit by sea emphatically does not serve to hasten the ending of a war." But, besides this, numerous

[1] So also White, 1899; Meurer, *ibid.*
[2] *Ibid.*

prominent writers, such as B. Gessner,[1] Vidari,[2] Pelaez,[3] v. Martens,[4] Caudry,[5] and Bluntschli,[6] have expressed the idea in their works.

My contention is, above all, supported by the fact that for centuries a war has never been decided by the application of the right of prize. Nor has there, so far, been any record of its exerting a predominating influence. In the War of the Spanish Succession England lost 1,146 merchant ships, of which 300 were recaptured; France 1,346. Mahan, in his book, remarks on this[7] that if one compares these figures with the issue of the struggle, no further proof is needed of the slight result of a purely commerce-destroying war. In the Seven Years' War, England lost some 2,500 ships; the French, on the other hand, only 950. Yet what was the result of the war? In the war of American Independence England lost some 1,000 ships, the Americans still more. Here, too, we get a total failure of such captures to influence the issue of the struggle. Between the years 1793 and 1813, 10,871 English vessels were taken by French ships without materially altering the military situation, either in favour of the French, or to the disadvantage of the English.

[1] "Das Beuterecht im Land und Seekriege," 1875.
[2] "Del rispetto della proprietà privata," etc., 1867.
[3] "La proprietà privata dei sudditi di uno stato belligerante," 1870.
[4] "Les droits de la propriété privée pendant la guerre," 1869.
[5] "Le droit maritime international," 1862.
[6] "Das Beuterecht im Kriege und das Seebeuterecht insbesondere," 1878.
[7] P. 220.

It is true Lieutenant-Commander Goette expresses the view[1] that the struggle between Napoleon and England showed how, in circumstances where every other device of war failed, it was necessary to have recourse to indirect means of fighting against commerce and private property if the war was to be carried to its conclusion. To this it may, however, be answered that the war between Napoleon and England was not fought to a conclusion, but remained undecided.[2] Therefore on the contrary that struggle must be regarded as a proof, at least, that war on the question of commerce alone cannot bring about a decisive issue.

In the same way the law of prize remained without effect in the Greek War of Independence of 1821-9: for it was in battles on land and sea only that the issue was decided. Nor was it otherwise in the War of Liberation of the Spanish colonies in America in 1810-25.

The Crimean War also demonstrated the slight importance of war upon commerce. The Anglo-French fleet which sailed in August, 1854, for the Baltic, was forced to recognise that not much was accomplished by the seizure of a few Russian merchant vessels, and in the further course of the war the issue attached mainly to the capture of the fortress of Sebastopol, and the attacking of trade therefore played a very subordinate part.

[1] "Marine Rundschau," 1901, p. 1001.
[2] Cf. Rodenberg, "Seemacht in d. Geschichte," p. 19.

The effect of prize has been no greater in wars since the Declaration of Paris. In the Civil War of 1861-5 the cruisers of the Southern States—especially the *Sumter*, the *Florida*, and the notorious *Alabama*—captured 269 vessels, no small number in the circumstances. This is particularly the outcome of the fact that since the 'sixties the American mercantile marine has retrograded greatly in the transport of merchandise across the Atlantic. In 1860 its share was 66 per cent., and in 1870 it had fallen to 35 per cent.[1] Although in that war the Southern States inflicted more damage on the Northern by prize-making than the Northern on the Southern, the struggle was eventually decided on land in favour of the North, as Choate pointed out in 1907.[2] It is no concern of ours here that the South at the time was compelled to undergo a blockade at the hands of the North. There was then no adequate communication by land, and the conditions to-day would be quite different.[3] Moreover, the North could never wholly prevent blockade-running. In any case the War of Secession serves to demonstrate that in former times the right of blockade sufficed for the purposes of naval warfare, and that the right of prize proved of no considerable importance.

It is well known that in 1864 the superiority of

[1] Thiess, "Organisation und Verbandsbildung," p. 35.
[2] Prot. III., p. 758.
[3] Cf. Preuss. Jahrb., Vol. 100, "The Blockade of the Southern States."

the Danish fleet made itself very unpleasantly felt. The share of Prussian ships in harbour traffic sank at the time from 690,000 to 330,000 tons.[1] By all these measures of the Danes the merchants, indeed, were much injured, but any effect on the result of the war was as little recognisable as in 1848, when Prussia's harbour traffic fell from 6,913 ships, with 900,000 tonnage, to 4,166 ships, with 610,000 tonnage.[2]

The same may be said of the war of 1870-71, in which France took only 75 German merchantmen. It would be very erroneous to raise the objection that this was not a maritime war. For that very reason the fleet, not having to concentrate for battle, had all the more chance of inflicting damage on the enemy's commerce.

In the Russo-Turkish war the fate of Turkey was essentially decided by the Russian victory at Plevna, and the attack on commerce was negligible.

In the struggle between China and Japan in 1894-5, the law of prize played as small a part as in the Spanish-American War.[3] In the latter, especially, the attack on commerce on both sides showed little energy, and harassed the neutrals more than the belligerents. The Americans captured only some 40 Spanish vessels. There can be no

[1] Peters, II., p. 182.
[2] *Ibid.*, p. 181.
[3] Cf. Preuss. Jahrb., 1899, p. 32; also Plüddeman, "Marine Rundschau," 1898, p. 1252.

doubt that such warfare had absolutely no influence on the issue of these struggles.

But, even in the mighty conflicts at sea between Russia and Japan, the effort to inflict financial injury on the enemy by crippling his commerce was, as Maltzahn says, merely subsidiary.[1]

Many writers, it is true, hold that one cannot deduce the probabilities of the present from the small effect of war on commerce in previous naval wars, as nowadays quite other means would be used.

In so far as war is waged with submarines, torpedo-boats, and mine-laying ships I gladly agree to this. But I cannot possibly see how, in as far as it is waged by cruisers against the enemy's commerce, it can differ markedly from what it was before, or how the enemy will be more materially injured now than formerly by the capture of his merchant ships.

It may be contended, in a general way, as General von Clausewitz argued in 1832, in his famous work on "War," that "only the destruction of the fighting navy can decide a war at sea."

This idea has obtained acceptance since the great struggles of the Dutch with the English in the seventeenth century, just after the miscalculation of the English in regard to a war of pursuit had involved them in exceedingly eventful experiences.

Any admiral of to-day who declared the crippling

[1] P. 98.

of the enemy's trade to be the first duty of naval strategy would have to be relieved of his post. Only in battles is the fate of nations determined at sea to-day, and the best proof of this is the fact that in all naval conflicts we hear of battles which produce a rapid change in the respective positions.

Disregard of this fact robbed the Spaniards, Portuguese, Dutch, and French of the sovereignty of the sea in the eighteenth century, and permitted England to rise in their stead: England, whose gallant assumption of the offensive against the prudent defensive of its opponents at the battle of Trafalgar was rewarded by the greatest of triumphs, lasting even to this day. V. Arnim[1] recently contended, in excellent fashion, that the days are over when the wealth of a country, Spain, for instance, depended upon a couple of treasure-ships, and when the sinews of war could be cut off at a single stroke; nowadays, only the defeat of his fighting ships could be fatal to an enemy.

V. Halle[2] is exactly of the same opinion. "It is the prevalent view that the fate of war, and with it the future of commerce and the mercantile marine, must and will be decided in great battles. Not war on commerce, but the victories of the central fighting forces will determine it.

Broadly speaking, naval warfare is nowadays calculated for battle and not materially for

[1] "Marine Rundschau," 1907, p. 1404.

[2] P. 59; so also (Prot. III., p. 762) Choate and (Prot. III., p. 783) Barbosa.

attacks on commerce. This may be seen from the fact that in the year of Trafalgar 556 British men-of-war were in commission, whereas in 1906 the English Navy had only 177, excluding torpedo craft. War on commerce, however, naturally demands as many and as fast cruisers as possible, since it necessitates a wide distribution of the ships, so that, as v. Arnim[1] rightly argues, opinion has turned markedly against attacks on commerce, even if one counts torpedo craft, which are not particularly suited to the purpose. It must not be forgotten here that the capabilities of steamers and sailing-ships are exceedingly different, and hence the foregoing figures afford material for only the vaguest conception on the point.

I should like to devote a few lines more to this quite notorious state of things, because French writers,[2] such as Admiral Jurien de la Gravière, Admiral Aube, and, above all recently, Commandant Vignot,[3] have advanced the view that the sole possibility of successful tactics against England lies in injuring her commerce, and, therefore, such warfare would be decisive in a conflict with that country. This ignores the fact that almost the entire commerce of England would be carried by neutrals, and that a very large portion of her ships would remain in harbour. Moreover, she would certainly be able

[1] *Ibid.*, p. 1408.
[2] The so-called "New School."
[3] *La Marine Francaise*, January, 1899.

to give convoys to another portion of them. Again, it is forgotten that simply in order to protect commerce the English fleet would force on a battle.[1] If, in that event, the enemy's fleet should fall back and quit the scene of operations in order to avoid an encounter, how could it thereafter control so effectively the situation as to English commerce? But if it came to a battle, the position of things would be unaltered. Should England be worsted, her defeat would be possible without war on commerce: but in the opposite event England would be mistress of the sea, and could from her numerous bases protect her commerce, especially if the enemy's warships avoided the theatre of war.

I close my contention as to the slender results of a war of pursuit by quoting, in support of my views, that most prominent writer, Vice-Admiral Galster (retired), who for years has advocated in Germany the value of the guerrilla method of warfare. Though he greatly magnifies such warfare in as far as it is waged with submarines, torpedo-boats and mine-layers as the most outstanding resource in a naval war against England, to the same method employed with cruisers against the enemy's commerce he can only accord the dignity of an operation of the second order. I maintain that such a dictum is highly significant.

The arguments up to now are all the weightier from the expert's point of view, if one remembers that

[1] Cf. the apt arguments in Fitger, pp. 14 and 15; also "Marine-Rundschau," 1903, p. 318.

the retention of the right of prize constantly contributes to the augmentation of the various fighting navies. Yet we will not enter more closely here into this view, which is integrally connected with the question of disarmament.[1]

From all that has been said it results that the use of the right of prize in a naval war has never had, nor can have, a decisive, *i.e.*, crushing, effect. One must not, therefore, deny to the right of prize all effect in a war at sea. In many cases it will, doubtless, evoke minor subsidiary results. But is such effect so valuable as to justify the grave injury to the world's economy which must necessarily follow in the wake of that right? The question can only be answered in the negative if one sums up the actual effects of the right.

[1] Cf. particularly Barbosa's and Satow's speeches in 1907 (Prot. III., p. 786; do., p. 788).

CHAPTER X.

INDIRECT EFFECTS OF THE LAW UPON NEUTRALS.

SPECIAL emphasis must next be laid on the striking fact that, thanks to the law of prize, neutral shipping companies extraordinarily extend their commercial relations at the expense of belligerent Powers, as Hagerup[1] in particular insisted at the Hague in 1907. Instances will best demonstrate this. Between the years 1794 and 1800 the share of neutrals in English commercial traffic rose from thirteen to thirty-four per cent. Haek[2] mentions that the American Civil War and the Russo-Japanese War had a favourable influence on the development of the Hamburg-America Line. The North German Lloyd even received a magnificent impulse from the War of Secession.[3] In the wars of 1848–9 Great Britain had to record an increased share in Prussian harbour traffic of 702 ships with 120,000 tons register.[4] In the War of Secession there passed over to the British flag in

[1] Prot. III., p. 790; so also Choate, *ibid.*, 758 *et seq.*
[2] Pp. 20, 46.
[3] *Ibid.*, p. 76.
[4] Peters, *ibid.*, II., p. 181.

1861, 126 ships belonging to the Union, with 72,000 tons burden ; in 1862, 35 ships, with 75,000 tons ; in 1863, 348 ships, with 253,000 tons, and in 1864, 106 ships, with 92,000 tons. The Spanish-American War brought many profits to the whole of the German shipping interest.[1] As Rathgen[2] insists, in the Russo-Japanese War the neutral mercantile marines took over a considerable portion of the traffic previously served by the Japanese flag.

In many instances neutral Insurance Companies also profit by war at sea. Thus Manes[3] mentions that the war between Holland and England brought into the Hamburg market insurances which in peaceful times used to fall to the lot of exchanges abroad.

Nay, even the possibility of a war has often had a very favourable effect on the trade of nations not endangered by the threatened struggle. The impending possibility that England would be involved in the Austro-French War brought about, in 1859, a most extraordinary rise in the rates of insurance for all English ships. For this reason it was found necessary in England to confine freights almost exclusively to neutral ships. As Geffcken[4] mentions, at that time, at Calcutta and Canton,

[1] "The Hamburg-America Line in the sixth decade of its development," p. 17.
[2] "Marine Rundschau," 1907, p. 329.
[3] "The Insurance System," p. 303 ; also Kiesselbach, pp. 25, 41, 55.
[4] H. H., IV., p. 597.

American ships of the second rate received fifty per cent. higher freightage than British first-rates. Similar consequences attached in 1878 to the possibility of a conflict between Russia and England. Very eloquent, moreover, is the fact that, after Gladstone's warlike speech in 1885, the rate for coal from Cardiff to the Baltic rose from 5*s.* 6*d.* a ton to 8*s.* 9*d.*

It is, however, to be remembered that this profit to neutral shipping companies grows smaller as the years go on. While formerly the shipping enterprises of the various countries stood isolated, the tremendous progress of communication has brought about a connection between almost all the great companies of the world.[1] It is generally known that since January 1st, 1903, the Morgan Trust, composed of English-American vessels, has entered into a community of interests with the Hamburg-America Line and the North German Lloyd, and that these combinations have mutually insured each other a share of the profits. The German companies[2] pay the Trust annually an amount corresponding to the dividend of a share capital of a million sterling. On the other hand the Trust pays the German companies annually six per cent. on

[1] The private insurance joint-stock companies of the various countries have also banded together since 1874, in the "International Transit Insurance Union," with head office at Berlin.

[2] For the figures see Baumgarten-Meszlény, "Kartelle und Trusts," p. 179 *et seq.*

the same sum. It is worth noticing also that the fares of the third-class passengers are divided between them.

Since 1885 there have existed what are called the Cologne Continental Conferences, which received their final shape in 1892 in the "North Atlantic Steam Liner Union," which was at once joined by the Hamburg-America Line, the North German Lloyd, the Holland-America Line, at Rotterdam, and the Red Star Line, at Antwerp. In 1903, the Compagnie Générale Transatlantique at Havre joined this combination. This alliance has pledged itself to the fullest co-operation, and excluded competition by enacting that every member of the pool must present his voucher of traffic to the central accountant's office at Jena. Should a member have carried more passengers than by fixed percentage belongs to his share, the excess is put into the chest of the pool, and thence it is passed on to those whose share in the relative percentage is less.

The famous rivalry between the North Atlantic Liner Union and the old Cunard Line brought about later the entrance of that line, together with that of the allied Hungarian and Austrian lines into the aforesaid union. These great shipping companies form together a union of interests. The influence which the great German companies exercise on the foreign may be seen from a remark in the report of the general meeting of the Hamburg-America Line in 1904, "Our

company exercises a controlling influence over six foreign lines."

Moreover, the great lines often have shares in each other, for instance the North German Lloyd at the beginning of 1909 had shares in the Holland-America Line of a face value of nearly £120,000.

But even apart from the members of the North Atlantic Liners Union, combinations in the form of pools are nothing unusual in the domain of ocean traffic. As Baumgarten and Meszlény insist, undertakings concerned in certain relations with brisker traffic often form a pool for the transport of merchandise or passengers, and fix the share of each member in the same manner as has been already depicted above for the North Atlantic Union.

Whether these regulations would undergo any modification in time of war I cannot say, because the companies concerned keep the pool conditions a special secret. If any Power to which one of the companies belongs were engaged in a war, undoubtedly the share or profit would be different, and probably the regulations as to the sharing of profit as regards the line concerned would be suspended during the war. But after the war the neutral companies also would have to suffer from the smaller profit returned at the time by the excluded line.

If the great companies are thus mutually interested in their receipts, it stands to reason that the

advantage accruing from the taking over of alien traffic must be correspondingly less than in earlier times, when each Company was independent. While, then, the disadvantages that fall on the whole country—which will be considered below—would be permanent, the advantage described would last only during the course of the war. For the commercial relations of the greater merchants have become much more stable than they were, and would revive when the war was over. With sea-borne commerce what matters is not the command of the sea, but that of the markets beyond the sea. It is also to be remembered that in the case of a blockade the profit is at once *nil*. Hence, while it should not be forgotten that neutral shipping companies still draw some advantage from a naval war, we must at the same time beware of over estimating these advantages.

But what is the effect of the increased receipts of the shipping companies on the whole trade of a country? Do the national finances of all neutral Powers profit thereby?

The international quality of maritime commerce is shown above all by the fact that all great Powers participate in the joint external traffic of the others. The financial interests, once wholly separate, of the various States have become welded in a union of world-wide finance. I quote here only the share of the British flag in the total external traffic of the European Powers :—

Country.	Total External Traffic by Sea in Reg. Tons net.	Share of the British Flag.
Germany ...	35,517,584 ...	9,229,742
Finland ...	3,836,280 ...	487,935
Sweden ...	15,373,091 ...	1,886,801
Norway ...	2,297,396 ...	739,967
England ...	90,963,966 ...	64,216,728
Netherlands ...	17,308,328 ...	8,229,401
Belgium ...	16,517,610 ...	7,843,977
Hungary ...	4,029,429 ...	425,444
Greece ...	7,674,994 ...	254,940
France ...	33,563,852 ...	15,647,037
Denmark ...	11,271,707 ...	1,148,390
Spain ...	26,843,144 ...	9,293,477
Portugal ...	17,854,563 ...	9,665,576
Italy ...	20,222,404 ...	5,598,765
Austria ...	4,677,861 ...	500,068
Russia ...	14,924,346 ...	6,515,057

These are only the figures for the States of Europe: not to be too exhaustive, I omit the statistics for the non-European States, and only mention that these would quite as plainly indicate the international nature of commercial traffic. In view of such a reciprocity of interests between the particular States, it can at once be seen that injury to a single mercantile marine adversely affects the interests of all countries in the world. True, the neutral companies can take over the most important traffic, but the maintenance of communications with the smaller States will not be insured if only because of the briefness of most wars. For commerce cannot be so readily organised by neutrals.

Hagerup[1] very rightly recognised in 1907 the great connection between navigation and the whole of commerce, when, in the debates upon an International Prize Court, he declared, "I think I ought to remind the Commission that in the matter under discussion it is not only the interests of navigation but those of neutral trade in general that are to be protected."

A very interesting instance of how greatly the injury of a single marine affects the trade of neutral States is afforded by the boycott of Austrian goods by the Turks in the winter of 1908–1909. For, in as far as it was aimed at the steamers of the Austrian Lloyd it greatly injured not only Austrian but German trade. The Lloyd company was for months unable to unload its cargoes in the Levant ports, and its vessels had to return to Trieste, after a fruitless trip, with their cargoes still on board. The company thus saw itself forced to advise German traders to have their goods unloaded there, and to reship them *viâ* Venice by Italian lines. That meant, of course, an immeasurable loss to German trade, as the Eastern consignees either would not take the goods at all, arriving so late and with two or threefold freightage, or demanded a longer credit for them.

It is a known fact that the trade of particular countries is so far dependent upon others that each country needs the produces of numerous other peoples, and somewhere must find sale for its own.

[1] Prot. II., p. 805.

Probably there is no country but Thibet independent of the world's trade. Choate,[1] in his memorial to the Second Hague Conference, very rightly points to commerce as the institution "in which the community of interests of all nations is finally established." From the taking over of commerce by neutrals, such a rise in the price of goods is brought about that throughout the world the produce of the belligerent countries—except such as is produced by other countries in sufficient quantity—grows dearer. But that is only the case to a slight extent. Add to this that with the briefness and rapidity of present wars the enhancement of prices is so sudden that no competition has time to arise. Hence numerous crises are the inevitable result of the law of prize. "The whole world feels the shock," said White in 1899, at the Hague. Stoerk[2] also very properly insists that "The whole range of the injury which our German industry undergoes through every naval war, whether Englishmen are opposed to Boers or Americans to Spaniards, is vastly greater than can be estimated from figures in the shape of a few ships kept from continuing their voyage and unloading. What do the few thousand pounds sterling amount to in face of the far larger sums which German trade lost by the total warping of

[1] Prot. III., p. 771.

[2] "The Protection of German Trade in War at Sea," p. 4. Cf. also the apt contentions of Wiegner, pp. 344, 345, as also Voelcker's book, "German Finance in Case of War."

favourable conjunctures, by the natural caution with regard to export, by the impossibility of delivering certain kinds of goods according to contract, by the enhancing of the rates of freight and the like?" Owing to war with America and other countries during 1801–2, the price of wheat per quarter rose to £7 10*s*., whereas in 1892 it had not exceeded 43*s*. The War of Secession was especially disadvantageous to England. That country was then the chief consumer of raw cotton, which was obtained from the Southern States alone. Hence the war brought nearly all the cotton factories in England to a standstill. In 1862, out of 350,000 workers in the trade only 92,000 were in full work, 200,000 in partial work, and 58,000 wholly out of work. The Russo-Japanese War also sorely troubled the neutrals, and probably but for their influence Japan would not have signed the Peace of Portsmouth with Russia. Of course makers of arms and ammunition and certain other manufacturers draw their greatest profit particularly from war. But what does all that signify, or the profit above mentioned to neutral shipping enterprises, as against the vast injury to the world's finance in other directions? The fact that the Chambers of Commerce of almost all the great countries of the world have already addressed numerous memorials to their respective Governments, is a proof of the great extent to which international trading circles have long been convinced of the harmfulness of the law of prize.

Recently also the inter-parliamentary Peace Conferences[1] have set on foot a keen propaganda in favour of abolition, and Dr. Pachnicke, of the German Imperial Parliament, was able at the Berlin Conference, in September, 1908, amidst the applause of the most prominent politicians of numerous countries, to demonstrate that the law was at variance with the modern conception of justice.

It is also to be remembered that the damage to be expected from the law of prize increases from year to year.[2] The maritime trade of the various Powers grows much more quickly than their exchange of products by land. Owing to the greater cheapness of water routes, it is natural that there should be increasing efforts to import goods by sea. It must also be considered that the population of many countries, particularly Germany, Austria, England, and North America, are turning more and more from agriculture to industry, and therefore are increasingly dependent upon the importation of foreign food-stuffs.

In the same way it must be insisted upon that trade becomes from year to year more international. To what an enhanced degree German finance has become dependent on the market of

[1] Cf. *inter alia*, the proceedings of the XIth Meeting at Vienna (" Compte rendu, etc.") and the XIVth Conference in London.

[2] Cf. Paschen, pp. 22, 23; also Niemeyer in " Tag " of March 6th, 1909, in the same way the First Lord of the Admiralty, on April 21st, 1909, in the House of Commons, in a debate on a resolution introduced by the Labour Party to abolish the law of prize.

the world is shown by the fact that foreign trade amounted in 1872 to 23,400,000 tons, and in 1904 to 87,700,000 tons. Imports rose from 13,000,000 to 49,000,000 tons, and exports from 10,000,000 to 39,000,000. While the population has increased only 50 per cent., Germany's external trade has multiplied fourfold.

The ever-increasing international character of trade is further manifest from the fact that of late international combines and trusts, especially the so-called rail and sleeper combines, controlled by the Düsseldorf Steel Union, have been constantly springing into being.[1]

Barbosa, in 1907, in order to show the international character of commercial traffic, pointed to the fact that the great earthquake at San Francisco chiefly affected English and German Insurance Companies.

The arguments hitherto adduced were in no way meant to show that the right of prize must be abolished on account of its pernicious effect on the trade of neutrals. It was only my wish to point out how doubly senseless the retention of the right must be, in view of the fact that it not only has no decisive effect on war, but also grievously disturbs the harmony of the world.

As the Declaration of Paris was, according to the pronouncement of Satow[2] at the Second Hague

[1] Prot. III., p. 784.

[2] Prot. III., p. 832; so also Kriege in London in 1909. ("Actes," p. 169).

Peace Conference, intended above all to afford protection to neutral Powers, it is to be hoped also that regard for neutrals will at least not be wholly ignored in future negotiations as to prize. The Chinese delegate Foster[1] very rightly protested in 1907, "It is perfectly proper to insist that nations which do not wish to follow the dictates of reason, but to obey the impulse of war, should molest as little as possible the trade and industries of the peaceable nations." In the same way Ferraz[2] pointed out that the harassing of neutral countries was one of the greatest injustices of every war.

[1] Prot. III., p. 805.
[2] Prot. III., p. 578 ; also the Austrian Envoy Dumba in London in 1909. "Actes," p. 228.

CHAPTER XI.

DIRECT EFFECTS OF THE LAW UPON NEUTRALS.

HERE, no doubt the advocates of the right will rejoin that the harassing of neutral countries cannot be avoided, but is inherent in the nature of war. But one must not leave out of account the consideration that the loss of numerous ships means a serious injury to an enemy. In reply to this contention, what follows will show who it is that has to fear the damage occasioned by the right of prize, *i.e.*, the seizure of an enemy's ships and merchandise.

At this point we must emphasise the completeness of the change wrought in the conditions now under consideration by the impulse recently given to shipping companies and maritime insurance.

To begin with, one of the most prominent features of this development is that separate enterprises and private lines have more and more given place to monster companies, and especially to joint-stock ownership.[1] This has been mainly

[1] Wüstendorfer, p. 34 *et seq.*

accomplished through the necessity to-day for building iron and steel vessels of constantly growing dimensions. How far the capitalistic organisation of the shipping industry has already advanced is shown by the example of Hamburg, eighty-one per cent. of whose total steam tonnage at the beginning of 1903 was in the hands of joint-stock companies. In the Hanse ports there existed in 1900 only two ocean-going regular lines of steamers which were in private hands, that of R. M. Sloman, junr., and the Woerman Line, of which the former was transformed into a joint-stock company as early as 1903.

It is to be gathered from this—if one assumes the absence of insurance or, what amounts to the same, self-insurance—that the loss of a ship[1] is borne by a great number of shareholders. These can naturally make good the loss much more easily than could a few companies. Moreover, in the case of the largest German firms particularly, the share capital is held in exceptionally sound and financially well established circles. Add to this that the Bremen and Hamburg merchants[2] are interested in the great lines and their management, not only as to money but, as Thiess[3] says, as to their reputation and trade "in

[1] From this Renault tried in 1907 to deduce that the law of prize was no longer directed against private persons. Yet it must be pointed out that even in land warfare such companies are treated as private individuals.

[2] Those of Bremen rather than of Hamburg. Cf. Jolles' article "Heinrich Wiegand," in the "Tag" of April 1st, 1909.

[3] *Ibid.*, p. 12.

the patriarchal sense." There can thus hardly be any question of ruining the lines by the law of prize. For only a portion of the ships being on the high seas, their loss could always be replaced. In the same way such a company will also be in a position to make good easily the damage resulting from ships being harbour-fast.

The share capital of the shipping companies, however, is not exclusively in the hands of home shareholders, but to some extent in foreign hands. For instance, Clause 2 of section 1 of the German Law concerning the nationality of merchant ships expressly grants to certain legalised persons having their domicile within the Empire, the right to hoist the flag of the Confederation without requiring the shareholders to be subjects of that Empire. As Murken mentions, American financiers have completely denationalised certain great English lines. Consequently, even neutral shareholders have often to bear the loss caused by the law of prize. It is another matter, of course, when the flag is changed at the purchase of a whole line, as happened in 1898, when the North German Lloyd bought up the Scottish Oriental Steamship Company and the East India Steamship Company.

The companies are, as a matter of fact, almost all insured against loss, and the larger firms, which hitherto had been partly self-insured,[1] have lately taken to insurance proper, such as has

[1] P. 99.

long been generally in vogue in England. In the German Empire, the Hamburg-America Line, for instance, which, until the beginning of 1908, had been self-insured, had recourse at that date to ordinary insurance.[1] Hence the loss falls upon the insurance companies, and not upon the shareholders of the shipping companies. How greatly German insurance companies, for instance, were injured in 1870–1871 by the capture of a few ships, may be judged from the fact that of twenty-two marine insurance offices in Bremen in that year, only three were still doing business in 1872.[2]

In all countries but Norway insurance companies have for the most part had the form of joint-stock corporations for a far longer period than shipping companies, and hence here, too, the loss is divided among a great number of shareholders. Here and there, it is true, the shares of the insurance offices are in foreign hands. Thus, in 1890, the Royal Exchange Assurance Corporation took over half the shares of the Hamburg "Insurance Company of 1873." Moreover, it is of prime importance to establish the fact that many lines insure their vessels with foreign firms. Thus the English "Lloyd's" takes risks from all countries in the world.

In 1901, not less than seventy foreign marine insurance offices were represented in Hamburg by

[1] As to the North German Lloyd it is to be noticed that it was founded as a shipping and river and sea insurance company, so that formerly it even undertook to insure foreign companies. Cf. Plass, p. 520.

[2] Cf. Manes in the "Tag," February 26th, 1908.

agencies, whereas that city itself had at the time only nine such offices of its own. In a report of the Hamburg Chamber of Commerce in the 'nineties of last century complaint is made that most marine insurances are taken out in England. It is just during a war that the subjects of the belligerent Powers are most apt to insure their ships with neutral companies.

These facts were adequately taken into consideration as early as the "Compact touching the instituting of an International Prize Court." By Art. 5, namely, the lodging of an appeal is open to neutral or hostile parties who have a legal interest in the success of the private individual entitled to appeal and have already espoused his cause in the proceedings before the national Courts. Renault says emphatically,[1] "The comment has been made that the owners of a ship or a cargo were not the only people that might suffer from a capture." On the motion of Asser and Beernaert [2] it was expressly laid down that these minor sufferers could appeal each on his own account in proportion to their several interests. It was primarily taken into consideration that ships are often insured with several companies, and those, moreover, of various nationalities, and a particular company might he debarred from appealing by reason of its native State. In that case the other companies are nevertheless to be allowed to make

[1] Prot. I., p. 189.
[2] Prot. I., p. 23.

good their right in proportion to their interest. Even Art. 64 of the London Convention speaks quite generally of "those interested." [1]

All these great insurance offices are habitually insured in their turn and that mostly with foreign companies. The development of German super-insurance in the last decades is particularly typical, just because to an increasing extent it is foreign business. The Hamburg assurance office in which the Hamburg-America Line insured itself recently, is, in its turn, insured with twenty other companies, mostly English. Different conditions of insurance, however, prevail to some extent in the various countries, and therefore it may easily happen that the original insurer has to replace losses which the super-insurer has not to bear. But this is an exception. Generally speaking, we may say, in almost all cases as many of the neutral as of the enemy's private companies suffer by the law of prize. Hence Barbosa observed quite rightly, in 1907,[2] "The fact is that in seeking to wound the enemy with arms of this kind one most often wounds oneself. The matter becomes clear in reflecting on the modern rôle of assurance companies."

It is true that, as regards the latter arguments, two qualifications must be made. Firstly, war risk, the idea of which is by no means uniform, and which is nowadays not so willingly accepted by private insurers as it was.

[1] "Actes," p. 374.
[2] Prot. III., p. 783.

Especially is this the case since the Spanish-American War, and the troubles between Chile and Peru. At that time, particularly, English, and—thanks to the international quality of underwriting—other insurers also were taken by surprise by events and suffered great losses, as they had taken over the war-risk, even for open policies, without extra premiums. Since then they have been more cautious in England, and followed the example of continental countries, by which war insurance is only held to be excluded by a special proviso. In Holland only are war insurances still included without mention. It is worth noticing that in open, *i.e.*, not graduated, insurances, the war risk can at any time be discontinued at very short notice. For, as Girtanner rightly says,[1] "you cannot reckon the extra rate for it beforehand, and must therefore leave the insurer his freedom both as to the taking over and the rate of the premiums." Thus, owing to the South African War, the "Vereeniging von Assuradenren" in November, 1899, repudiated the stoppage risk on all current insurances, and so caused merchants to insure their goods against the war risk in a separate policy, and that at a premium of one-eighth per cent. In Hamburg there were in the 'seventies three insurance companies, by whose trade description it was plain that they took war risk,[2] for instance, the "Insurance Company of 1868

[1] "Assekuranz-Jahrbuch," 1901, p. 89.
[2] Cp. Plass, pp. 641, 749, 754.

for sea, war, river, and land transit risks." Nowadays, when insurance companies consent to insure against war risk, it is only at comparatively high premiums. Even though at the outbreak of war carrying companies are put in a position, owing to the rise in price of freightage, to pay big premiums, these often reach such a height that owners do not insure their ships or goods at all against war risks. Renault very rightly declares,[1] "the insurer, if he disregards the seriousness of the risks, is forced to exact war premiums that are often exorbitant or else insufficient." The owners then, of course, have to bear the loss brought about by the law of prize.

The height of the premiums will, however, have a continuously decreasing tendency during this century. The more the course of codifying the law is adopted, the more will the conditions become known under which ship and cargo are seized, and the more will it be possible to estimate the risk.[2] Thus, if only by reason of the decisions of the London Convention, the insurance rate will be lower in the next war at sea, as v. Flöckher has already insisted.[3]

Premiums will undergo further modification from the fact that contracts by which the merchant

[1] "Actes," p. 369.

[2] Cf. "Decisions of the Supreme Commercial Court," Vol. VII., p. 171.

[3] "Morgen," 1909, p. 588; cf. also the chapter, "The Merchantship and her Cargo in Naval Warfare," in "Nauticus," 1909.

ships of the one belligerent are insured with the assurance companies of the other are, as a rule regarded as void. Of course, this rule holds only where the capture has been legally made. In the case of illegal capture, as Girtanner says,[1] the underwriter is bound, even towards an alien underwriter. That principle, first advocated in the *consolato del mare* and the *guidon de la mer*, obtains in England. In 1748 and 1792 England made laws against the insurance of such vessels as were the property of Frenchmen. Quite recently in England the maxim was affirmed, both expressly by several decisions during the Boer War, and tacitly by the new English law of marine insurance of December 21st, 1906.[2] In France also this prohibition is recognised. Thus French commentators have expressed the view that "war risks are excepted from marine super-insurance." For it might come about that the country of the super-insurer were at war with the country under the flag of which the uninsured ships sailed, and then, even though indirectly, support would be given to the hostile Power. At the outbreak of the Russo-Japanese War, French shipowners, who had secured their war risk with English underwriters, owing to the possibility of France's being drawn into the war, sought covering insurance for their vessels

[1] "Insurance Year-Book," 1901, p. 96.

[2] Cf. Goldschmidt, "Law as to Private Relations between an Englishman and a hostile Foreigner in case of War," in "Zeitschrift für Völkerrecht und Bundesstaatsrecht," Vol. I., pp. 353 *et seq.*

on the Continent, *i.e.*, concluded insurance compacts to the effect that a continental company should cover the loss, in case the English underwriters did not pay.[1] In Germany, as Voigt declares,[2] this maxim also holds good, and likewise in many other countries. No doubt this prohibition is fully logical, while the law of prize is retained. The object of the capture of the enemy's private property at sea is supposed to be the destruction of the enemy's commerce, and this aim would be thwarted if, for instance, in a war between England and Germany, a German vessel seized by England should be replaced by English insurance companies. Accordingly, as long as the right of prize is recognised, no abrogation of this prohibition can be compassed.[3] Hence it was quite without significance when, in 1905, nineteen English insurance companies issued the declaration (1) "that they alike, in peace and in war, would, under all circumstances, strictly fulfil the obligations incumbent upon them owing to agreements of insurance entered into by them within the German Empire, and (2) that no laws obtaining in England would hinder the carrying out of the immediate obligations assumed within that Empire."[4] For this declaration cannot claim a legal significance, seeing that private

[1] "Bl. für Vers. Wissenschaft," XIXth year, p. 299.

[2] P. 8.

[3] The Paris Declaration, as has been shown above, is also not quite logical.

[4] Manes holds a different view: "Bl. für Vers. Wissenschaft," p. 298.

announcements of intention cannot abrogate any clause of public law. A breach of that prohibition would, doubtless, come under the heading of high treason. In accordance with the aim of the prohibition, the time at which the agreement of insurance is concluded is quite immaterial. On the other hand, the view is correct that it must be distinguished whether the claim for insurance arises before or after the outbreak of war. Naturally the prohibition does not include such losses as have arisen before the outbreak of war. An interesting and apposite case was decided by the English House of Lords in 1902. The Government of the Transvaal before the outbreak of war impounded gold in course of transit. It had to be decided whether the insurance was invalid because the approach of war was suspected. The Lords rightly answered in the negative. Only from the beginning of war does the law of prize obtain, and from that same date the prohibitions attaching to it.[1] This decision, by-the-by, is interesting, because, by the law of insurance, the danger of war is already there when two parties stand facing each other in a hostile mood without war being as yet declared.

It stands to reason that what has hitherto been said holds good only when the policy of insurance has been effected in the country to which the insurance company belongs. It is quite another matter when, for instance, an English company has

[1] Cf. the contrary English view in another case, Liepmann, p. 340.

effected a policy with German shipowners. Then the German line can sue in Germany, and the judge there will not trouble himself about the English veto. Yet a German judgment for execution will be worth nothing even then unless the English company has real property or capital in Germany, and the judgment can be enforced within that country.

In certain cases nothing prevents the country to which the insurance company belongs from setting aside the prohibition in question.[1] Thus the English Government during the course of a war has, in certain circumstances, repeatedly granted concessions, by which all commercial relations were permitted with the enemy's country, particularly when a colony.

The following ruling, which also holds good in England, is worthy of note. "If property be lost which was insured with an English company by the subject of a foreign Power while that Power was still at peace with England, but at war with another Power, the insurer still retains a claim for compensation if war breaks out with England. But this claim remains dormant during the war, and can be revived again only after its termination."

It is to be expected that together with the abolition of the law of prize a regulation for naval war will be introduced similar to that which we already possess for land warfare in Art. 23, *h* of the Code: "The abrogation or temporary setting

[1] Cp. "Insurance Year-Book," for 1901, p. 131.

aside of the rights and claims of subjects of the adversary, or the prohibition of their bringing suit is forbidden." In a proposal relating to the laws of naval warfare Van Karnebeek, in 1907,[1] declared this ruling to be equally applicable to war at sea.

In spite of these limitations it may be maintained that the seizure of an enemy's ship injures not only that enemy's shipping companies, but also those of neutrals. Even if to-day the injury inflicted on the former is the greater, it will year by year be more distributed among other nations as commerce becomes more international. This will cause the nations to realise more and more clearly that the right of prize is injurious to the whole economy of the world, and their realisation that the law is at variance with the essence of the comity of nations will become the more vivid. What the old Code of international law did not bring about, the new Code—being based on the international solidarity of national interests, as Niemeyer and Nippold aver—will accomplish, and we can therefore assume with certainty that the abrogation of the law of prize is only a question of time.

[1] Prot. III., p. 1060.

CHAPTER XII.

ENGLAND AND THE LAW OF PRIZE AT SEA, PARTICULARLY IN COMPARISON WITH GERMANY.

THE fact particularly needs emphasising that England, herself one of the greatest opponents of the abrogation, would have to suffer in an especial degree by the application of the law in a naval war. Lord George Hamilton in 1894 announced, on the strength of his experience as First Lord of the Admiralty, that all English sailing-ships and steamers of less than twelve knots speed would be laid up on the outbreak of war. This applies alike to ships of the United Kingdom and those of the colonies. Remember that in that year England owned 2,869 sailing-vessels with a nett tonnage of 1,894,442, and 8,352 steamships of 13,652,455 tons in all, of which only 1,033 of the latter made twelve knots and upwards. Thus a prominent English expert testifies that 10,000 English vessels would be laid up in the event of war breaking out. Although this statement is to be received with reservations, yet one may conclude from it that England's position with regard to the law of prize is by no means particularly favourable.

Let us now discuss the particular disadvantages of

England in a naval war. To begin with, the English mercantile marine is much more vulnerable than the German, seeing that its seagoing vessels have five times the tonnage. While, then, the trade of other belligerent Powers can mostly be taken over by other and neutral marines, this is not possible to the same degree for England. That country will thus be forced to carry on its trade partly with its own vessels, and that means a special prospect of capture for the English ships.

The German mercantile marine is, moreover, in respect of its organisation, considerably stronger than the English. Such powerful lines as the Hamburg-America and the North German Lloyd existing nowhere else in the world. Even the Morgan Trust is not as strong as these two taken together. Of the German total 76·6 per cent. belongs to the largest lines with over 39,000 tons, in England only 52·5 per cent.[1] How much more would the small companies, which in England are so much more numerous than in Germany, have to suffer from a naval war than the great firms? These can easily recover, where the smaller ones are often exposed to destruction. It has also to be borne in mind that what is called haphazard sailing is much commoner in England than with us. The German lines almost always build their ships for a settled run on settled routes, whereas in England tramps are very common. Out of upwards of eighteen and a half millions of British tonnage

[1] Thiess, p. 4.

to-day only four millions belong to fixed lines, so that the remainder falls to the companies having a more or less haphazard destination. This results in a splitting up of the entire merchant service.

The German ships have fully determined connections which are systematically maintained. The great houses always send their goods by the same vessels and are not in the habit of changing. For they have a confidence, built up in course of time, in certain lines. If, therefore, a regular service in Germany, for instance, is interrupted by war, on the conclusion of peace the commercial relation revives again, whereas with the numerous tramps in England this is much less the case. With irregular companies, moreover, combines, which lighten the struggle for existence, seldom arise. To form one, it is above all necessary that the spheres of interest should be sharply defined. With irregular steamers, on the contrary, as v. Halle remarks,[1] outsiders can easily intervene, if the chances of a fixed destination appear at all favourable.

The fact is also worth recalling that in England most shipping companies are the outcome of individual enterprise, whereas most of the great continental firms came into existence at once as joint-stock companies. Hence, in the English companies the purely personal element preponderates more than elsewhere, and, as Wiedenfeld[2] insists, in such

[1] "Marine Rundschau," 1909, p. 412.
[2] "The World-ports of N.-W. Europe," pp. 211, 212.

cases there is often a jealous clinging to complete independence which is detrimental to the corporations. This reason frequently prevents fusions with rival enterprises, and many undertakings fritter themselves away in fruitless competition.

Moreover, in England narrow bounds are set to the aggregation of capital, because there only the capitalised strength of a single industrial firm is limited. The latter procures a sufficient share to ensure itself the control of affairs, whereas on the Continent many private adventurers and banks share that task, and thus the expansion of the capital proceeds much more easily. In face of the current endeavours to aggregate capital, there can be no doubt that this state of things means a great disadvantage to England.

This defect of the great English companies has made itself visible above all in their not being able to maintain their independence against the American trust, whereas the Hamburg-America Line and the North German Lloyd sustained the encounter unscathed.

In addition to this, it is a matter of notoriety that in England the proportion of the fighting navy to the mercantile marine is far less advantageous than in Germany. To every ten tons of the former in England there go sixty-five tons of the latter, whilst in Germany it is only fifty-three tons of the latter.

The fact must also be seriously considered that the great dependence of English trade on America

may be very unpleasant to Great Britain in case of war at sea.

Of the total British imports, as lately as 1900, more than a quarter came from the United States, and even though of late the proportion has changed to the advantage of England, the most essential part of this danger is still present.

Germany is much more happily situated in this respect, as she is not dependent in any particular way on American products. The English Government recognised this danger at the time of the founding of the Morgan Trust, and liberally supported the Cunard Line at that juncture so as to make it independent of America. This is especially noticeable, because the non-intervention of the State in matters of trade and industry in England in ordinary circumstances is proverbial. But even in traffic with other countries the share of the English flag is greater than the German. In 1902, England's participation in the seaborne trade of other countries was greater than the German in the case of

Russia by 4,727,522 tons.
France „ 9,961,408 „
Holland „ 3,330,984 „

At the beginning of the last century England was still in a position to export food-stuffs, whereas now she can meet the demand by her own produce only for about six or eight weeks. Three quarters of the wheat and rye she uses, half the meat,

a large portion of the vegetables and fruit, and the entire supply of sugar, rice, sago, tea, coffee and cocoa are brought from overseas. The whole import of food-stuffs amounts yearly to fourteen and a half million tons. Of this total nine and a half millions are made up of the various kinds of grain. Of wheat and rye the yearly consumption is 5,700,000 tons, 4,370,000 tons being imported, and only 1,360,000 tons produced in the country. England furnishes approximately one million tons of meat out of the yearly supply of over two millions, whilst almost exactly a million comes in the shape of cattle from abroad. In 1815, England's demand for foreign bread-stuffs was three per cent., to-day it is seventy-five per cent. The English population increased in the years 1865–1905 from twenty-nine to forty-two millions, *i.e.*, by forty-five per cent., whereas the rise of the import of wheat from thirty-five to one hundred and twelve millions gives a percentage of two hundred and twenty-two.

"If our commerce by sea is stopped now, we perish by starvation" Boyd Kinnear confessed in a supplement to the *St. James's Gazette*, as early as October, 1886. England had to feel very bitterly, notably in the Crimean War, the rise of the price of wheat, and she grew in those days three times as much wheat as now. Not a single English ship was at that time captured by Russia, and yet the price of wheat rose from fifty to seventy-five shillings a quarter. Shortly before an outbreak

of war there always arises a specially strong demand for wheat.

All dealers in grain are bound on the outbreak of war to buy up as much as possible of the available supply of cereals, in order to draw as great a profit as possible later from the necessities of the belligerents. It has been repeatedly discussed whether the impending danger should not be averted by the creation of stores of grain, such as have long existed in Gibraltar and Malta, but hitherto no conclusion has been reached.

In England, as almost everywhere else, the number of workers who take to agriculture grows constantly smaller. In 1851 there were in England and Wales, out of every 1,000 inhabitants, 106 so employed, but now there are not even thirty.

Added to which there are many branches of manufactures—taken roughly, employing half the population—devoted to the working up of raw stuffs, and if their import was successfully prevented many factories would have to close. An instance of this was quoted above from the War of Secession. For it stands to reason that by the sudden barring of export and import, trade and industry are quickly disturbed. Wilkinson, in his essay, "Does War Mean Starvation?" contended that in the event of war the greater portion of the factories that work up foreign raw material or supply articles of export would have to be closed. At the same time the great decrease in imports would entail a general

rise in prices and a dearth of other necessities of life as well. Captain Stewart Murray estimates the number of workmen who would be without bread in England during a war at not less than thirteen millions. Cotton and silk notably England obtains wholly from abroad, and whereas a generation ago it was the first iron country in the world, and only imported some 2 per cent. of its ore, it has now to bring in some 50 per cent.

All these facts acquire enhanced importance when one remembers that, in the absence of binding treaties, England's commercial relations with civilised powers lack reciprocity, and that the bulk of her export trade, therefore, tends more and more towards foreign markets, subject to the most violent fluctuations.

England should, moreover, remember the extraordinary injury which the Boer War inflicted upon her commerce, as a consequence of which the collective share of other nations in her seagoing trade has increased.

The abolition of the law of prize would, therefore, be overwhelmingly advantageous to England. This view is also that of v. Halle.[1] He even expresses the opinion that without simultaneous abolition of the law of blockade all countries except England would only be hampered in their conduct of war, while private individuals would be none the safer. Yet this is only an exaggeration of an idea that is

[1] "Handelsmarine und Kriegsmarine," p. 67.

right in itself. Even a practical man like Admiral Valois[1] is of opinion that the application of the law of prize by the weaker Powers would very greatly injure England. Japan, for that matter, is in a similar position to England, whilst America, France, and Germany would not derive much advantage from the abrogation of the law.

Thus the upshot is that the very country that upholds the right would reap the greatest advantage from its abolition. This fact is very peculiar, and one can well understand Frhr. v. Schleinitz's proposal,[2] like that of Hautefeuille in 1868, that several countries should mutually pledge themselves jointly to treat as an immediate *casus belli* any future failure by England or any other Power to respect private property in naval warfare.

In 1907 England[3] sought to justify her adverse attitude towards the American proposal for the abrogation of the law of prize by pointing out that the right could only be abolished simultaneously with the right of blockade. As long as the latter remained to the fore ships would constantly be searched, and many contentions would arise as to whether a blockade was effective. As a result of such displays, the belligerent considering himself aggrieved by the other would, of course, cease to observe the inviolability of private property at sea.

[1] "Deutschland als Seemacht," p. 76; so also, Niemeyer, 'Marine Rundschau," 1906, p. 1107.
[2] "Deutsche Reme" for 1905, p. 184.
[3] Prot. III., pp. 788, 832.

Even if it is true that there is a connection between the right of blockade and that of prize, I still think that the English dread is exaggerated, and cannot justify the retention of the latter right.

CHAPTER XIII.

SUGGESTIONS FOR REFORM.

MANIFOLD proposals have already been made for the amendment of the law of prize. Before these are discussed it must be pointed out that only with difficulty can private insurance fully make good the losses and damage to ship and cargo resulting from war at sea. Hence it has been proposed that insurance against naval war should remain a private transaction only until the premiums rise to $2\frac{1}{2}$ per thousand. From that point on, the State should intervene and receive a premium of $2\frac{1}{2}$ per thousand for taking over the risk.

Speaking generally, marine insurance presents such a tremendous risk that even in the eighteenth century several adventurers combined jointly to sustain the dangers which one alone could not easily meet. With this is also connected the fact that re-insurance is found hand in hand with marine insurance at the very beginning. In time of war the risk grows so vastly that the greatest private companies cannot always bear the loss.

I. In 1875 Lorimer proposed, in two letters to the *Times*, a system of State insurance, and justified his view as follows: "If the conduct of war should

demand that private belongings be violated without fault on the part of their owners, the State which has undertaken the war must in equity itself bear the risk by insuring the owner against the results of the said war."[1] This proposal is so far not reasonable that individuals can at most only claim compensation for damage, and that, on the other hand, there can be no question of insurance, seeing that on the strength of the Lorimer proposal there is a total lack of the necessary condition of insurance companies, viz., the premiums. But this inexactitude in the method of expression should for that matter carry no weight in considering the value of the proposal. What Lorimer meant is clear: the State is to recoup all shipowners for the loss resulting from the law of prize. Gessner objected that recognition of such a duty of compensation on the part of the State would call into being endless speculation in purposely permitting the enemy to capture the speculator's ship, as Baron v. Marschall insisted in 1907.[2] But assent cannot be given to that objection. The State would, doubtless, only repay the definite loss, *i.e.*, the value of the ship and cargo, not the loss of present and future profits, *e.g.*, from valuable transactions. Before new ships take the place of those lost there is time for other lines to attract trade to themselves.

[1] Cf. Brüders, "Zeitschr. für d. ges. Versicherungswissenschaft," 1902, p. 142: "The immediate obligation to intervene in full measure against the results of war rests with the State, *i.e.*, the citizens collectively."

[2] Prot. III., p. 906.

An owner would thus think twice before he let a ship of his be captured, just to receive the full value of a fresh ship, but no compensation for the lost connection or orders. The State, moreover, would make no compensation if it could prove the deliberate intention of bringing about a capture. Strict enactments with a view to the punishing of anyone who causes an insured vessel to sink or run ashore, such as the Germans have in Sec. 265 of the Criminal Code, would have their effect.

Recently it has been justly pointed out that owners of cargoes from foreign countries could ship the same under British colours and interpolate some sort of an owner in the cargo-note in order to throw the risk on the English Government, and that it would further easily be possible to claim compensation for any mishaps arising from the dangers of the sea by asserting that they were brought about by the war. From the standpoint of the law of nations, Klobukowski[1] replied to Lorimer's proposal that the undertaking of such a pledge was the business of an individual State and not of international law. That is right, but did Lorimer really regard his theory as within the bounds of the law of nations? Bluntschli[2] advances the opinion that no country in the world ever acknowledged a legal obligation to replace loss incurred by its subject owing to a war. This is

[1] P. 69.
[2] *Ibid.*, p. 154.

inexact[1] as, after the war of 1870–71, shipowners had the damage caused them by the enemy repaid to them by the Empire out of the war indemnity. At that time Art. 13 of the Peace of Frankfort provided that France was to pay compensation to the Empire for the ships captured. A sum of 2,8000,000 thalers was assigned for the purpose out of the Imperial Liquidation Fund[2] for Shipowners, out of which two millions fell to them, 700,000 to the cargo-owners, and 100,000 to the crews. Besides this, three millions were paid for the hire and keep of crews of German ships shut up in foreign harbours. Nevertheless, a claim on the part of owners for compensation for the same in home ports was not allowed. The reason then adduced was that detention in a foreign port was much more detrimental than being laid up in a home port. For one thing, the vessel at home enjoyed legal protection, and, besides, the crew could be dismissed. These two reasons are not quite convincing. The shipowner might well be glad that the Empire made itself responsible. It should be noted that no insurers who had suffered loss by paying insurance due to the capture of German ships got anything. It was rightly pointed out[3] that they had made a speculation of war and, therefore, must bear the loss.

[1] Remember, too, the contributions and requisitions in land warfare : see above.

[2] Peters, II., p. 185.

[3] Girtanner holds differently, "Assekur-Jahrbuch," 1900, pp. 130, 131 ; also Plass, p. 477.

It is of interest to mention in this connection that with regard to the Turkish boycott of Austrian goods in the winter of 1908–9, the project of the Austrian Government's compensating the affected industries was mooted.

A proposal put forward by Renault in 1907,[1] at the Hague, touching "participation by the State in losses by capture," to which Austria had suggested amendments, was not adopted.

The proposal that the State be bound to compensate has often been made also in the form that the cost of insuring against war risk should be repaid to the owner or merchant.

II. The question of a real Government insurance against war at sea—no mere duty of replacing loss—was first mooted in Portugal in 1375, in Hamburg in 1622, and in Holland in 1629. In quite recent days England had this proposal sifted by a Royal Commission.[2] Although this Commission arrived at no decision, in the course of its proceedings it made various very interesting suggestions. One of them starts from the principle that Government war insurance should be free of compulsion, but admission to it be open to shipowners. All ships are to be insured that are plying between England and foreign ports, and all cargoes owned by Englishmen that come into port in English ships. On the other hand, such ships are not to be insured as ply between neutral ports, or

[1] Prot. III., pp. 794, 809, 905 *et seq.*, 1149.
[2] Cf. Manes in "Tag" of July 21st, 1908.

between a neutral and a colonial port. In the same way cargoes carried in English ships from England to the colonies and neutral ports are excluded. The State insurance office would be in close connection with the Marine Department of the Board of Trade, and entitled to impose regulations on merchant ships with regard to their sailing. Those failing to obey the instructions of the insurance office were to lose the right to compensation. All damage was to be made good which was inflicted on the ship and cargo by the enemy, or by the Government for purposes of defence. The amount of the compensation was to be fixed by a mixed committee. Further, the cost of such Government war insurance is put by the Commission at twenty-five millions sterling in a single year.

Now, as regards my attitude towards the question of State war insurance, not to say State obligation to compensate, I consider it the duty of Governments, as long as they uphold the right of prize, to protect trade against the dangers of naval war. Whether, on the part of the State, compensation for loss or insurance is preferable, is a question which cannot be answered within the narrow limits of this essay. To do so needs such earnest study as the English Commission gave it, setting forth the results in 1,034 closely printed pages. The majority of the witnesses expressed themselves at the time in favour of compensation.

III. Another suggested reform has always found

many advocates, being based on the principle that with the mere seizure the aim of the law of prize has been attained, and so ship and cargo will have to be given back later. Even Christian Wolf expresses this view in a quite general way. He considers that every belligerent may seize the enemy's chattels so as to force his opponent to peace, but that on the conclusion of the war he must restore them all. The same standpoint was taken up by the Russian Professor Kachenovski, in his work "Prize Law." He understands by the immunity of private property not the complete freedom of commercial traffic, but the substitution of temporary detention, not outlasting the war, for the quite unnecessary confiscation of private vessels. The more recent writers also, such as Heffter, de Boeck, Bonfils, Bluntschli, Röpcke, and Hammann, call for a reform of that nature. Admiral Valois[1] raised against this proposition the objection that in view of the large profit which commercial enterprises usually brought in, a mere passing retention would not have a deterrent effect. As a matter of fact, it cannot be denied that such a revision of the law of prize would rob it of much of its harmfulness.

Renault, in 1907,[2] drew attention to the great difference in this respect in the situation of countries with numerous harbours as compared to the countries with only a few. That is, perhaps, really

[1] *Ibid.*, p. 74.
[2] Prot. III., p. 481.

the most valid objection to this proposed reform. The countries which could not rapidly take a ship into port, and must therefore sink it, would have to pay compensation after the war, and that necessity would naturally fall less heavily on those with numerous anchorages. Van den Heuvel's suggestion,[1] however, that the argument that all principles of naval warfare have a different effect on different countries, does not overcome this objection. The proposition has, moreover, the disadvantage that the estimating of the amount of compensation would lead to many disputes, which would be too great a burden thrown on the International Prize Court.

In spite of these objections we must hold to the contention that war is not directed against individuals, and that where a necessity of war, even though wrongly alleged, dictated the capture, compensation must ensue.

A proposal tending in this direction,[2] made by Belgium, and supported by Holland and other Powers, at the second Hague Peace Conference, viz., "Substitution of sequestration for confiscation," was not adopted. By this proposal the capturing Power was to be entitled, under certain conditions, to sink or to sell the enemy's merchant ships, and always to be allowed to apply them to meeting its own needs. After the conclusion of

[1] *Ibid.*

[2] Prot. I., p. 249; III., p. 806 *et seq.*, 840 *et seq.*, and 1145 *et seq.*

peace the ships were to be restored, and that usually at the very place where they originally lay. There should be no obligation to compensate for the use or the sinking of them, provided that the captor Power and its representatives acted according to law. It was further laid down that the proceeds from the sale of ships or merchandise should be handed over. It was also provided that on the conclusion of peace the country to which the injured merchants belonged might take over the entire liability of the other country for compensation. Among the amendments to the Belgian proposal which Holland brought forward, the peculiar clause which provided that the capturing Power should be entitled to demand from the owner of the ships which it held captive the amount of the cost of such detention as a species of contribution, was particularly noteworthy as wholly misinterpreting the idea of compensation. It was also proposed by Holland that in case of the sinking of a vessel the owners of the neutral merchandise on board that vessel should be compensated "at the earliest opportunity," and not merely "at the conclusion of hostilities." Holland also wanted, as a corollary to another proposition brought forward by herself, and already mentioned, to bar compensation for sinking or loss, provided that the vessel had no guarantee from its country of origin that it should not be used for military purposes.

IV. My own advocacy of the entire abrogation of the law of prize at sea needs no further justifica-

tion after the enunciation of the principles already maintained. In spite of all past failures one may, believing in the continued evolution of all human institutions, express the hope that at no very distant date, under the firm guidance of North America, the Powers will pursue the course laid down for them not only by humane considerations, but also by modern conceptions of the nature of war.

BIBLIOGRAPHY.[1]

v. Arnim, "Handelsangriff und Handelsschutz einst und jetzt" in "Marine-Rundschau," 1907, p. 1404.

Askevold, Seebeuterecht, "Ethische Kultur," 1. October, 1908.

Attlmayr, Das Internationale Seerecht. Vienna, 1903.

Aube, A terre et à bord. Paris, 1884.

v. Bar, Die Unverletzlichkeit des Privateigentums im Seekriege, "Die Nation," 1906, p. 134.

v. Bar, Die Haager Friedenskonferenz, "März," 1. June, 1907.

Baumgarten-Meszlény, Kartelle und Trusts, Berlin, 1906.

Benedix, De praeda, Uratislaviae, 1874.

Bentwick, The Law of Private Property of War. London, 1907.

Bergbohm, Die bewaffnete Neutralität 1780—1783. Berlin, 1884.

v. Bloch, Der Krieg. 4 volumes, Berlin, 1899.

Bluntschli, Das moderne Völkerrecht der zivilisierten Staaten. Nördlingen, 1878.

Bluntschli, Das Beuterecht im Kriege und das Seebeuterecht insbesondere. Nördlingen, 1878.

Boeck, Propriété privée ennemie sous pavillon ennemie. Paris, 1882.

Boidin, Le lois de la guerre et les deux conférences de la Haye. Paris, 1908.

Bonfils, Manual of Political Economy.

Borckenhagen, Zum Studium der Seekriegsgeschichte, "Marine-Rundschau," Vol. VI., p. 185.

Bry, Précis élémentaire de droit international public. 5th Edition. Paris, 1906.

[1] Some further indications appear in the text. Works dealing purely with political economy and insurance law have been consulted only with regard to Chapter 4.

Büsch, Ueber das Bestreben der Völker, einander in ihrem Seehandel recht wehe zu tun. Hamburg, 1800.

v. Bulmerincq, Das Völkerrecht oder das internationale Recht. Freiburg i. B., 1884.

Calvo, Le droit international théorétique et pratique, 3rd edition, Vol. III. 1880.

Carpentier, Les lois de la guerre continentale. Paris, 1904.

v. Chlumecky, Der Krieg in Ostasien und die Reform des Seekriegsrechtes auf der künftigen Haager Konferenz, "Zeitschrift für das Internationale Privat- und Oeffentliche Recht der Gegenwart." Vol. XXXIII., section 4.

v. Clausewitz, Vom Kriege. Berlin, 1832.

Compin, Essai sur le blocus maritime en temps de guerre, 1899.

Daveluy, Studie über die Seestrategie. Berlin, 1906.

Depambour, Des effets de l'occupation en temps de guerre sur la propriété et la jouissance des biens publics et particuliers. Paris, 1900.

Despagnet, Cours de droit international public. 3rd Edition. Paris, 1898.

Duboc, Le droit de visite et la guerre de course. 1902.

Dupuis, Le droit de la guerre maritime d'après les doctrines anglaises contemporaines. Paris, 1899.

Endres, Die völkerrechtlichen Grundsätze der Kriegführung zu Lande und zur See. Berlin, 1909.

Erdmann, Eine Krisis in der Kriegsmarine. Leipzig, 1909.

Erichsen, Deutschlands wirtschaftliche Existenz und seine Flotte. Kiel, 1900.

Ernst, L'œuvre de la deuxième conférence de la paix. Bruxelles, 1908.

Eyck, "Der englische Lordkanzler gegen das Seebeuterecht," "Deutsche Juristen-Zeitung," 1. October, 1906.

Ferber, Internationale Rechtsverhältnisse der Kriegs- und Handelsschiffe in Krieg und Frieden. Kiel, 1895.

v. Ferneck, Die Kriegskonterbande. Vienna, 1907.

Fitger, Schiffsbau- und Seeschiffahrt in den letzten Jahren. Berlin, 1892

Fitger, Die Rückwirkung des ostasiatischen Krieges auf das Völkerrecht. Berlin, 1904.

Fitger, Die wirtschaftliche und technische Entwicklung der Seeschiffahrt. Leipzig, 1902.

Fitzer, Ein Jahrzehnt in Schiffsbau, Rhederei und Seeschiffahrt. Berlin, 1909.

v. Flöckher, Die Ergebnisse der Londoner Seekriegsrechtskonferenz, im "Morgen." 1909, p. 588.

Fonseka, Der deutsche Seehandel und die Prisengerichte. Berlin, 1873.
Fried, Die zweite Haager Konferenz, Leipzig, 1907.
Funck-Brentano et Sorel, Précis du droit des gens, 2nd edition. Paris, 1894.
Galster, Welche Seekriegs-Rüstung braucht Deutschland? Berlin, 1907.
Galster, Eine "jeune école" in Deutschland? "Weser-Zeitung," No. 21944. Bremen, 1907.
Galster, Nochmals "eine jeune école in Deutschland?" "Weser-Zeitung," No. 21976. Bremen, 1908.
Galster, Keine Ueberhastung im Flottenbau. "Tag," 1908, No. 372.
Galster, Seekriegsrüstung. "Tag," 1909, No. 11.
Galster, Blockadegefahr? "Tag," 1909, No. 119.
Gareis, Institutionen des Völkerrechts. 2nd Edition. Giessen, 1901.
Gessner, Das Recht des neutralen Seehandels und eine Revision der darüber geltenden Grundsätze des Völkerrechts. Bremen, 1855.
Gessner, Kriegführende und neutrale Mächte. Berlin, 1877.
Girtanner, Das Kriegsrisiko in "Ehrenzweigs Jahrbuch." Vienna, 1900 & 1901.
Goette, Die indirekten Mittel des Seekrieges im Kampfe zwischen England und dem ersten französischen Kaiserreiche. "Marine-Rundschau," 1901, p. 1001.
v. d. Goltz, Seemacht und Landkrieg. "Deutsche Rundschau." Vol. CII., p. 335.
Haek, Hamburg-Amerika-Linie und Norddeutscher Lloyd. Berlin, 1906.
Hall, A treatise on International Law. London, 1904.
v. Halle, Die Entwicklung der deutschen Seeinteressen im letzten Jahrzehnt. "Deutsche Revue," 1906, p. 107.
v. Halle, Die englische Seemachtpolitik und die Versorgung Grossbritanniens in Kriegszeiten. "Marine-Rundschau." 1906, pp. 804, 911.
v. Halle, Handelsmarine und Kriegsmarine. Dresden, 1907.
v. Halle, Die Krisis in Weltwirtschaft und Weltschiffsbau im Jahre 1908. "Marine-Rundschau," 1909, pp. 406, 643.
Hammann, Der Streit um das Seebeuterecht. Berlin, 1907.
Heffter, Das europäische Völkerrecht der Gegenwart. 8th edition, revised by Geffcken. Berlin, 1888.
Heilborn, Das Völkerrecht. "Enzyklopädie der Rechtswissenschaft," Berlin und Leipzig, 1904. Vol. II., p. 973.
Holland, Studies in International Law. Oxford, 1899.

Holland, The Laws and Customs of War on Land. Oxford, 1904.
v. Holtzendorff, Handbuch des Völkerrechts. Vol. IV. Hamburg, 1889.
v. Holtzendorff, Rechtslexikon. Vol. I. Leipzig, 1880.
Huber, Die Fortbildung des Völkerrechts durch die II. Haager Friedenskonferenz. "Jahrbuch des Oeffentlichen Rechts." Vol. II., 1908.
Jacobsen, Seerecht des Friedens und des Krieges, Altona, 1815.
v. Kaltenborn-Stachau, Grundsätze des praktischen europäischen Seerechts. Berlin, 1847.
Keller, Requisition und Kontribution. Berlin, 1898.
Kiesselbach, Die wirtschafts- und rechtsgeschichtliche Entwickelung der Seeversicherung. Hamburg, 1901.
Klobukowski, Die Seebeute oder das feindliche Privateigentum zur See. Bonn, 1877.
Krauel, Die internationale Konferenz über Seekriegsrecht in London. "Deutsche Revue," 1909, p. 301.
Laymann, Die Ernährung der Millionenheere im nächsten Kriege. Berlin, 1908.
Lémonon, La seconde conférence de la paix. Paris, 1908.
Lentner, Das Recht im Kriege. Vienna, 1880.
Leroy, La guerre maritime. Bruxelles, 1900.
de Lescure, Le traitement des Neutres sur mer pendant les dernières guerres. Montpellier, 1903.
Liepmann, Der Kieler Hafen im Seekrieg. Berlin, 1907.
Liepmann, Nach welchen Gesichtspunkten ist für Zwecke des Seebeuterechts die feindliche oder neutrale Eigenschaftder Ware zu bestimmen? "Zeitschrift für Internationales Privat- und Oeffentliches Recht." Vol. XVII. Band. Section 3.
v. Liszt, Völkerrecht in "Birkmeyers Enzyklopädie der Rechtswissenchaft." 2nd Edition. Berlin, 1904.
v. Liszt, Das Völkerrecht. 4th Edition. Berlin, 1906.
Livonius, Die deutsche Nordseeflotte und die englische Seemacht. "Marine-Rundschau," 1902, p. 196.
Longuet, Le droit actuelle de la guerre terrestre. Paris, 1901.
Lorimer, Institutes of the Law of Nations. Edinburgh, 1882—1884.
Löwenthal, Das Untersuchungsrecht des internationalen Seerechts in Krieg und Frieden. 1905.
La Mache, La guerre de course dans le passé, dans le présent et dans l'avenir. Paris, 1901.

Mahan, Influence of Sea Power on History. 1897.
v. Maltzahn, Die Blockade als Mittel des Seekriegs. "Deutsche Rundschau," Vol. CXVIII., p. 399.
v. Maltzhan, Das Wirtschaftsleben der Völker und der Seekrieg. "Deutsche Rundschau." Vol. CXXI., p. 101.
v. Maltzahn, Der Seekrieg. Leipzig. 1906.
Manes, Transportversicherung. "Handwörterbuch der Staatswissenchaften." Jena, 1901.
Manes, Versicherungswesen. Leipzig, 1905.
Manes, Moderne Versicherungsprobleme. Berlin, 1906.
Manes, Die Wirkung eines deutsch-englischen Krieges auf Versicherungsverträge bei englischen Gesellschaften. "Masius' Rundschau." Vol. XIX., section 10.
Manes, Die sogenannte Selbstversicherung der grossen Schiffahrtsgesellschaften. "Tag," 26th Feb., 1908.
Manes, Das Scheitern der Pläne einer staatlichen Seekriegsversicherung in England. "Tag," 21st July, 1908.
Manes, Zielpunkte der Versicherungspolitik. "Zeitschrift für Politik." Vol. I. Section 4. 1908.
Manes, Versicherungslexikon. 2 vols. Tübingen, 1909.
Marstrand-Mecklenburg, Das japanische Prisenrecht in seiner Anwendung im russisch-japanischen Kriege. Berlin, 1908.
v. Martens, Political Economy. German edition by Bergbohm, Berlin, 1883—1888.
Mérignhac, Traité de droit public international. Paris, 2 vols., 1905—1907.
Meurer, Die Genfer Konvention und ihre Reform. Munich, 1906.
Meurer, Die Haager Friedenskonferenz. Vol. II. Das Kriegsrecht. Munich, 1907.
v. Mirbach, Die völkerrechtlichen Grundsätze des Durchsuchungsrechts zur See. Berlin, 1903.
Murken, Die Grundlagen der Seeschiffahrt. Berlin, 1904.
Niemeyer, Das Völkerrecht und der russisch-japanische Krieg. "Deutsche Juristen-Zeitung," 1905, No. 1.
Niemeyer, Der Friede von Portsmouth und das Völkerrecht. "Deutsche Juristen-Zeitung," 1905. No. 19.
Niemeyer, Englands Lebensmitteleinfuhr und das Seekriegsrecht. "Marine-Rundschau," 1906, p. 1203.
Niemeyer, Seebeuterecht. "Tag," 6th March, 1909.
Niemeyer, Prinzipien des Seekriegsrechtes. Berlin, 1909.
Nippold, die zweite Haager Friedenskonferenz. Part I., Liepzig, 1908.
Nowacki, Die Eisenbahnen im Kriege. Zürich, 1906.

Nys, Droit internationale. 2 vols. Bruxelles, 1904—1905.
Pachnicke, Epilog zur interparlamentarischen Konferenz in Berlin. "Neue Revue," vol. II., No. 2.
Paschen, Weltwirtschaft und Flotte. Munich, 1900.
Perels, Das internationale öffentliche Seerecht der Gegenwart. Berlin, 1903.
Perels, Privateigentum auf See in Kriegszeiten. "Marine-Rundschau," vol. 1903, p. 269.
Peters, Die Entwicklung der deutschen Rhederei. Jena. Vol. I. 1899, Vol. II. 1905.
Phillimore, Commentaries of International Law. London, 1879.
Piédelièvre, Précis du droit international ou droit des gens. 2 Vols. Paris, 1894—1895.
Pillet, Les lois actuelles de la guerre. Paris, 1901.
Plass, Geschichte der Assekuranz und der Hanseatischen Seeversicherungs-Börsen. Hamburg, 1902.
Plüddemann, Der spanisch-nordamerikanische Krieg. "Marine-Rundschau," 1898, p. 1252.
Pohl, Die rechtliche Natur der Blockade. "Zeitschrift für Internationales Privat- und Oeffentliches Recht," 1907, p. 1.
Pont, Les réquisitions militaires de temps de guerre. Paris, 1905.
den Beer Poortugael. Het Oorlogsrecht Haag, 1882.
Pradier-Fodéré, Traité de droit international public. européen et américain. 8 Vols., Paris, 1885—1906.
Rathgen, Die japanische Volkswirtschaft nach dem russischen Kriege. "Marine-Rundschau," 1907, p. 1251.
Reatz, Geschichte des europäischen Seeversicherungsrechtes. Berlin, 1905.
v. Reinhardt, Die Humanität im Kriege. Berlin, 1905.
Riess, Die Störungen der neutralen Schiffahrt im russisch-japanischen Kriege. "Marine-Rundschau," 1906, p. 1313.
Rivier, Lehrbuch des Völkerrechts. Stuttgart. 2nd Edition, 1899.
Rodenberg, Seemacht in der Geschichte. Stuttgart, 1900.
v. Rohland, Völkerrechtsquellen. Freiburg i. B., 1908.
v. Rohland, Grundriss des Völkerrechts. Freiburg, 1908.
Röpcke, Das Seebeuterecht. Leipzig, 1904.
Schiemann, Rechtslage der öffentlichen Banken im Kriegsfalle. Berlin, 1902.
v. Schleinitz, Unsere Zukunft liegt auf dem Wasser. "Deutsche Revue," 1904, p. 5.
v. Schleinitz, Der Seehandel, das Seekriegsrecht und die

Haager Friedenskonferenz. "Deutsche Revue," May, 1907.
Schmalz, Das europäische Völkerrecht. Berlin, 1817.
Schroedter, Die englische Handelsschiffahrt. Halle, 1906.
Sichel, Die kriegerische Besetzung feindlichen Staatsgebietes. Frankfurt a. M., 1905.
v. Stengel, Die Haager Friedenskonferenz und das Völkerrecht. "Archiv für Oeffentliches Recht." Vol. XV., p. 139.
v. Stengel, Die Entwicklung des Kriegsrechts im allgemeinen und des Seekriegsrechts im besonderen. "Marine-Rundschau." 1905, 420.
Stiege, Deutsche Seekriegsrüstung. "Tag," 1908, No. 381.
Stoerk, Das Völkerrecht, in "v. Holtzendorffs Enzyklopädie der Rechtswissenschaft." 5th Edition. Leipzig, 1890.
Stoerk, Der Schutz des deutschen Handels im Seekriege. Greifswald, 1900.
Taylor, Treatise on International Public Law. London, 1901.
Thiel, Das Gesetz über die Kriegsleistungen vom 13. Juni, 1873. Rostock, 1876.
Thiess, Organisation und Verbandsbildung in der Handelsschiffahrt. Berlin, 1903.
Thiess, Die Hamburg-Amerika-Linie. Berlin, 1905.
Travers Twiss, The Rights and Duties of Nations in Time of War. London, 1863.
v. Ullmann, Die Haager Konferenz von 1899 und die Weiterbildung des Völkerrechts. "Jahrbuch des Oeffentlichen Rechts," Vol. I., 1907.
v. Ullmann, Völkerrecht. 2nd Edition. Tübingen, 1908.
Ulrich, Die Ausdehnung der Genfer Konvention auf den Seekrieg durch die Haager Konferenz. Erlangen, 1907.
Ulrich, Das neue englische Seeversicherungsgesetz. "Zeitschrift für die gesamte Versicherungswissenschaft." Vol. 8. Band, section 2.
Valois, Seemacht, Seegeltung, Seeherrschaft. Berlin, 1899.
Valois, In den Grund gebohrt. "Deutsche Revue." 1905, p. 182.
Valois, Deutschland als Seemacht. Leipzig, 1908.
Voigt, Das deutsche Seeversicherungsrecht. Jena, 1887.
Wachenhusen, Der Seehandel im Seekrieg. "Deutsche Tageszeitung." 6th July, 1907.
Wegmann, Der ostasiatische Krieg und das Völkerrecht. Frauenfeld, 1905.
Wenzel, Ueber Lazarettschiffe im Seekriege. "Marine-Rundschau." 1890, p. 39.

Westlake, Chapters on the Principles of International Law. Cambridge, 1904.
Wharton, A Digest of the International Law of the United States. Washington, 1886.
Wheaton, Elements of International Law. London, 1905.
Wiedenfeld, Die nordwesteuropäischen Welthäfen. Berlin, 1903.
Wiegner, Die Kriegskonterbande in der Völkerrechtswissenschaft und der Staatenpraxis. Berlin, 1904.
Wilkinson, Does War mean Starvation? "National Review." November, 1902.
Wittmack, Eigentumsrecht an einem auf einer inländischen Werft im Bau begriffenen Kriegsschiff in neutralen Gewässern. "Archiv für öffentliches Recht." 1903, p. 607.
Wüstendörfer, Die seewirtschaftlichen Grundlagen der Rechtsentwicklung. Dresden, 1905.
A. Zorn, Grundzüge des Völkerrechts. 2nd Edition. Leipzig, 1903.
A. Zorn, Das Kriegsrecht zu Lande. Berlin, 1906.
Ph. Zorn, Der Stand des heutigen Seekriegsrechtes. Munich, 1898.
Ph. Zorn, England und die neuere Entwicklung des Völkerrechts. "Deutsche Juristen - Zeitung." 1st October, 1906.
Ph. Zorn, Die zweite Haager Friedenskonferenz. "Marine-Rundschau." 1907, p. 1251.
Ph. Zorn, Die Fortschritte des Seekriegsrechts durch die zweite Haager Friedenskonferenz. Tübingen, 1908.
Ph. Zorn, Das völkerrechtliche Werk der beiden Haager Friedenskonferenzen. "Zeitschrift für Politik." 1909, p. 321.
Die nordamerikanische Instruktion für Blockadeschiffe und Kreuzer in "Marine-Rundschau." 1899, p. 926.
Das Seekriegsrecht in den Vereinigten Staaten von Amerika. Leipzig, 1902.
Das Beuterecht im Seekriege gegenüber Fischereifahrzeugen. "Zeitschrift für internationales Privat- und Oeffentliches Recht." 1902, Parts 1 and 2.
Vorbereitungen für die zweite Haager Friedenskonferenz, in "Marine-Rundschau." 1907, p. 168.
Erfahrungen aus dem spanisch-amerikanischen Kriege, in den "Preussischen Jahrbüchern." 1899, p. 32.
Die Blockade der nordamerikanischen Südstaaten, in den "Preussischen Jahrbüchern." 1900, p. 315.

Bedeutet ein Krieg Hungersnot? "Marine-Rundschau." 1903, p. 318.

Die Stellung englischer Versicherungsgesellschaften in einem Kriege mit Deutschland. "Vierteljahrsrundschau über das Versicherungswesen." 1908, Part 1.

Deuxième Conférence de la Paix. Actes et Documents. Hague. Vol. I., 1908; Vol. II. and III., 1909 [quoted in the text as "Prot."].

Conférence Navale, Actes et Documents, London, 1909 [quoted in the text as "Actes"].

Die Cunard-Linie. Hamburg, 1907.

Die Hamburg-Amerika-Linie im sechsten Jahrzehnt ihrer Entwicklung. Berlin, 1907.

Der Kriegsbrauch im Landkriege, herausgegeben vom grossen Generalstabe. Berlin, 1902.

INDEX.

Abolition of Prize Law:
England's Opposition, ix., xii., xxi., 23
Italy and United States, agreement upon, xx.
Land and Sea Warfare, effects of abolition, xxiv.
Limitation of Armaments following upon, xiii., xx.
Reasons for, 129 *et seq.*
American Independence, War of, 137
American Prize Regulations, 76
Ammunition and Arms, seizure of, 27, 38
Ardagh, General Sir John C., 24
Armistice, Exercise of Right of Prize during, 61
Arms:
Hospital Ships carrying, Regulations, 83
Seizure of, 27, 38
v. Arnim, 142, 143
Asser, T. M. C., 163
Aube, Admiral, 143
Austrian Lloyd Line, 153
Austro-French War, 147
Austro-Turkish War, 186
Auxiliary Cruisers:
Numbers of, 59
Regulations for, 58 *et seq.*
Shipping Companies' Agreements to supply, 59, 116

Bank Deposits, seizure of, 28
Barbosa, Ruy, 20, 111, 113, 133 *note*, 142 *note*, 145 *note*, 157, 164
de Beaufort, W. H., 108 *note*
Beer Portugael, J. C. C. den, 73, 90
Beernaert, A., 6, 31, 42, 163
Berlin Conference, 1908, 156
Bernhardt, Sarah, 36
Blockade, Effects and Possibilities of, 132, 179, 180
Bluntschli, J. C., 1 *note*, 4, 19, 92, 137, 184, 188
de Boeck, 92, 188
Boer War, 42 *note*, 79, 131, 165, 167
Bombardment, when permitted, 46
Bonfils, 6, 28, 33, 45, 51, 120, 132, 188
Bowles, T. G., vii., xi., xv., xix., xxviii.
Boyd-Kinnear, J., 177
Bridges, Destruction of, 25
Bringing to and Search, Right of, 94 *et seq.*
Brussels Conference, 1874, 2
Brussels, Treaty of, 3
v. Bülow, Count, 66
Bynkershoek, 106

Cables, Seizure and Restoration of, 37
Calvo, 29
Campbell-Bannerman, Sir Henry, 24
Cargo, determining Neutral or Hostile Quality of, 70

Caudry, 137
Certificates of Search, 101
Chambers of Commerce, Memorials against Law of Prize, 155
China, German Expedition against, 1900, 131
Chinese-Japanese War, 1894—95, 140
Choate, J. H., 20, 21, 23 *note*, 111 *note*, 113, 115, 139, 142 *note*, 146 *note*
Churches:
  Exemption from Seizure, 9, 26
  Military observation from Church Towers prohibited, 27
v. Clausewitz, General, 141
Clothes and Shoes, seizure of, 38
Code—German Military Code, 8 *note*, 30, 36, 37, 38
Cologne Continental Conferences, 149
"Community of Character," xxvii.
"Compacts concerning Laws and Usages of War on Land," 8 *note*
"Compagnie Générale Transatlantique," 149
Compensation for Seizures, 8, 18, 19
  Laws of, 69, 89, 102
  Peace of Frankfort, Awards, 185
Confiscation, substituting Sequestration for, 189
"Consolato del Mare," 68, 106, 167
Contributions, 41
Convoy, Law of, 104
Crimean War, 138, 177
Cromwell, Oliver, xiv.
Cruisers. *See* Auxiliary Cruisers.
Cunard Line, 59, 149
Curtailment of War, Effects of Law of Prize upon, 113, 129

Dahn, F., 45
Davey, R., xvi. *note*
Deep-Sea Fishing Vessels, position of, 73
Destruction of Prizes, cases permitting, 94, 109
Distance of Approach in Search and Seizure, 99
Dumba, 158 *note*
Düsseldorf Steel Union, 157

East India Steamship Company, 161
England. *See* Great Britain.
Exemptions from Seizure, 9, 26, 27
Exports and Imports Statistics, 133, 177, 179
Eyschen, M., 32

Falsification of Ships' Papers, 103
Féraud-Giraud, L. J. D., 51
Ferraz, G. Iwens, 73, 74, 158
Ferryboats, Position of, 36 *note*
Fiore, 29
Fishing Vessels:
  Compensation, 75
  Exemptions from Seizure, 71
Fitger, 121, 144 *note*
Flags:
  Change of Flag, when and how permitted, 69
  False Colours, Sailing under, 104
  Hospital Ships, Regulations, 85
  Ownership of Vessels indicated by, 68
  Prizes, Flags flown by, 106
  Truce, Flag of, 90
v. Flöckher, 166
Forgery of Ship's Papers, 102
Foster, 113, 158
Franco-German War, 51
"Free Ship, Free Cargo," 129
v. Fried, 114

Fromageot, 42, 55, 56, 61, 71, 73, 121, 126
Fry, Sir Edward, 113
Funck-Brentano, 45
Fusinato, Guido, 78, 122, 123

Galster, Vice-Admiral, 135, 144
Geffcken, F. H., 6, 61, 120, 130, 147
Geneva Convention, 80, 87, 113
Gentilis, Justinus, 1
Germany:
  Blockade of, considered, 133 *et seq.*
  Fighting Navy and Mercantile Marine, proportion of, 175
  Joint-Stock enterprise as compared with England, 174
  Shipping Lines, position of, 173, 174
  Warships — position of Germany and England, viii., ix.
Gessner, B., 92, 107, 137, 183
de Gieslingen, Baron Giesl, 14
Girtanner, 165, 167, 185 *note*
Gladstone, W. E., 148
Goette, Lieut.-Commander, 138
Goldschmidt, L., 167 *note*
Government Banks, Deposits not seized, 28
Government Institutions, Exempt from seizure, 9, 16
Grace — Period of Grace allowed before seizure, 54
Grain Stores, 178
Gravière, Admiral Jurien de la, 143
Great Britain:
  Abolition of Booty Right opposed by, ix., xii., xxi., 23
  Aggregation of Capital limited in, 175
Great Britain—*continued.*
  American Imports, Britain's Dependence upon, 176
  Disadvantages in a Naval War, 172
  External Traffic by European Powers, Britain's Share, Table, 152
  Fighting Navy and Mercantile Marines, Proportion of, 175
  Imports, 100, 179
  Population, Increase in, 77
  Warships, Position of England and Germany, viii., ix.
Greek War of Independence, 138
Grey, Sir Edward, vi., xiii.
Grotius, Hugo, 1, 106, 112
"Guidon de la Mer," 167
v. Gündell, Major-General, 32 *note*

Haek, 146
Hagerup, Francis, 72, 100 *note*, 146, 152
Hague Peace Conferences, 3, 24, 48, 55, 113, 157
v. Halle, 119 *note*, 142, 174, 179
Hamburg-American Line, 131, 146, 148, 149, 162, 164, 173, 175
Hamburg Chamber of Commerce, 103
Hamburg, Insurance Company of, 1868, 165
Hamilton, Lord George, 172
Hammann, 188
de Hammarskjöld, K. H. L., 20
Hautefeuille, L. B., 61, 120, 127, 180
Heffter, A. G., 29, 188
Heuvel, J. van den, 19, 77, 81, 109, 189
Holland-America Line, 149
v. Holtzendorff, F., 13

Hospital Ships, Exemptions and Regulations, 79 *et seq.*, 127
"Hostile Infection," 68

ILLEGAL Seizure, Penal Enactments against, 13
Immovable Property, 25
Imports and Exports, Statistics, 177, 179
"Institut de Droit International," 103
Insurance Companies:
  Effect of Law of Prize upon, 162 *et seq.*
  Law Lords, Case before, 1902, 169
  Premiums, Modification of, 166
  Private and State Insurance, Suggestions, 182, 186
  Profiting by Naval Wars, 147
  Trusts and Combinations, 148
"International Code, Suggestion," 110
International Prize Court, xxxiv., 65, 110, 163, 189
"International Transit Insurance Union," 148

JAPAN:
  Abrogation of Prize Law, advantageous to, 180
  Chinese-Japanese War, 1894–95, 140
  Fishing Vessels used as Transports, 73
  Hospital Ships, Japanese Regulations, 80
  Internment, proposal, 125 *note*
  Prize Code, 1894, 98
  Russo-Japanese War, 34, 131, 135, 141, 146, 147, 155, 167
Jolles, 160 *note*

KACHENOVSKI, Professor, 188
v. Karnebeek, H. A., 55, 171
Kiesselbach, 147 *note*
Kipling, Rudyard, v.
Klobukowski, 184
Kluber, 29
Kriege, 123, 157 *note*
Künzli, Col. Arnold, 3

LAMMASCH, Henri, 77
Lands, Transfer of State Lands, 26
Larreta, 113, 114
Laymann, 39
Lentner, 2 *note*
Liepmann, 70 *note*, 103 *note*, 169 *note*
Lifeboats, Prize Regulations for, 79
Lights on Hospital Ships, 88
Limitation of Armaments—a direct consequence of Abolition of Booty Right, xiii., xx.
Lloyd's Insurance Company, 162
Loewenthal, E., 62
London Conference on Naval Warfare, 3, 117
London Convention on Naval Warfare, 68, 69, 104, 164, 166
Lorimer, J., 182, 184
Louis XIV., Wars of, 114
Lueder, 4, 7, 26
"Lusitania," 59

MABLY, Abbé de, 2
McKenna, Reginald, xiii.
Mahan, A. T., 137
Mail Boats, Regulations for, 90
Maltzahn, J., 141
Manes, 147, 162 *note*, 168 *note*, 186 *note*
Manual of Naval Prize Law, 97
Marcy, William L., 111
Maritime Trade. *See* Trade.
v. Marschall, Baron, 50, 183

de Martens, Rt. Hon. F., 20 *note*, 137
Merchant Ships:
Auxiliary Cruisers, Regulations for, 58 *et seq.*, 117
Bringing-to and Search, 94
Ignorance of War, Ships sailing in, Seizure Rules, 57
Neutral, used as Hospital Ships, Protection of, 88
Retention without Confiscation, 57
Meurer, 3 *note*, 4, 7, 34 *note*, 40 *note*, 42 *note*, 44, 48, 80 *note*, 86, 131 *note*, 136
"Military Necessity," cases arising under, 7, 10, 39, 75, 85, 107, 125 *note*
Mill, John Stuart, xxxii.
Milowanovich, M., 75
v. Mirbach, 62, 98, 99
Missionary Vessels, Exemptions from Seizure, 76
v. Moltke, General, v.
Money, Seizure of, 11, 27
Morgan Trust, 148, 173
Movable Property, Seizure of, 27
Municipal Property, Exempt from Seizure, 27
Murken, 161
Murray, Captain Stewart, 179

Napoleon, ix., xv., xvii., xxiv., 138
National Prize Courts:
Appeals from, 65
Inefficiency of, xxxiv.
National Property, Exemption from Seizure, 9, 25
Natural Products, Seizure of, 38
"Naval Almanac," 59
Navy League Propaganda, viii., xii.
Necessity, Military, Cases arising under, 7, 10, 39, 75, 85, 107, 125 *note*
Nelidow, 20, 55 *note*, 114
Netherlands War, 114
Neutral Harbours:
Prizes entering, regulations, 108, 110
Stay of Warships in, Rules limiting, 67, 78
Neutral Ships:
Convoy, Law of, 104
Destruction of Prizes, 96
Government War Insurance not applicable to, 186
Neutral States:
Equipment and Arming of Vessels within Neutral Suzerainty, 117
Indirect Effects of Law of Prize upon, 146 *et seq.*
Railways in, position in regard to Seizure, 30
Recruiting in Time of War, 121
Trade of Belligerents taken over by, 130
Neutral Waters, Right of Prize in, 62, 107
Neutrals:
Penalty Contributions, 53
Property of, Regulations, 32, 149
Niemeyer, 83, 131, 135, 171
Nippold, 171
North Atlantic Steam Liner Union, 149
North German Lloyd Line, 131, 146, 148, 149, 161, 173, 175
Nowacki, 12 *note*, 34 *note*, 35 *note*, 36 *note*

"Open" Insurances, 165
Ortolan, J., 120
"Outstanding" Contributions, Seizure of, 28
Ovtchinnikow, Colonel, 95

Owners of Ships, Determining Status of, 68, 70
Ownership—Prizes, Acquisition of Ownership, 106

Pachnicke, Dr., 156
Painting of Hospital Ships, Regulations, 85
Papers — Examination and Seizure of Ship's Papers, 100
Paris Declaration on Maritime Law, xxiii., 68, 94, 130, 132, 139, 157, 168
Participation in Hostilities, Acts constituting, 126
Paschen, 156 *note*
Peace Conferences at The Hague, 3, 24, 48, 55, 113, 157
Peace of Frankfort, 185
Peace of Portsmouth, 155
Peace of Ryswick, 1697, x.
Peace of Tilsit, 1807, xvii.
Peace of Westphalia, 23
Penal Enactments against Illegal Seizures, 13
Perels, 90, 94
Peters, 146 *note*, 185 *note*
Phillimore, Sir W. G. F., 32, 107
Pillet, 26
Plass, 165 *note*
Portugael, J. C. C. den Beer, 73, 90
Postal Ships, Regulations for, 90
Pradier-Fodéré, P. L. E., 29
Prices in Times of War, 155, 177
Prisoners of War:
  Prize Crews, Regulations, 120, 121
  Release on Parole, 123
  Weapons, Seizure of, 38
Private Property:
  Inviolability of, 2, 8
  Land and Naval Wars, Private Property in, vii.
Prize Courts:
  International, suggested, xxxiv., 65, 110, 163, 189
  National. *See* that title.
  Preservation and delivery of Prizes, 105
  Procedure in, 18
Prize-Money, assignment of, 17
Prize Regulations, 17, 76, 98
Provision Stores, Seizure of, 27
Public Property, position as regards seizure, 8, 9, 26
Pufendorf, 106

Railways:
  Seizure of, 30
  Ferryboats, 36 *note*
  Rolling and Fixed Stock, 34
  Rates, powers of raising, 35
  Restoration after War, 33, 35
Receipts for Requisitions and Contributions, 47
Recruiting in Time of War, Rules, 121, 122
Red Star Line, 149
Release on Parole of Prize Crews, 123
Renault, Louis, 17, 20 *note*, 56, 58, 65, 74, 81 *note*, 113, 114, 160 *note*, 163, 166, 186, 188
Requisitions, 43, 44
Resistance to Search or Seizure, penalties for, 98
Restoration of Seized Property, 19, 20, 33, 35, 47, 48
Retention of Prize Law, Reasons for, 111 *et seq.*
Rodenberg, J., 138 *note*
Ronard de Card, 29
Röpcke, 12, 45 *note*, 188
Rose, Uriah M., 20, 114, 115 *note*
Russo-Japanese War, 34, 131, 135, 141, 146, 147, 155, 167
Russo-Turkish War, 140

Safe-Conducts for Ships, 55
St. Petersburg Convention, 113
San Francisco Earthquake, German and English Insurance Companies affected by, 157
Satow, Sir Ernest Mason, 75, 77, 78, 121, 122, 123, 145, 157
v. Schleinitz, Baron, 180
Schlief, 113 *note*
Schroedter, 133 *note*
v. Schwarzhoff, Colonel, 43
Scientific Purposes, vessels fitted for, Exemptions, 76
Scottish Oriental Steamship Company, 161
Search :
  Right of Bringing-to and Search, 94 *et seq.*
  Hospital Ships, 84
Secession, War of, 116, 131, 139, 146, 155, 178
Self-Insurance of Shipping Companies, 160, 161
Sequestration, substitution for Confiscation, 189
Seven Years' War, xi., xiv., 137
Shipping Companies :
  Auxiliary Cruisers. *See* that title
  Increased Receipts, effect on Trade, 21
  Insurance. *See* that title.
  Pool Conditions, 149
  Trade Relations, Extension at Expense of Belligerents, 146
Shoes and Clothes, Seizure of, 38
Sichel, Jules, 27
Sick and Wounded :
  Prisoners of War, Seizure of Sick as, 127
  Transport Vessels, Regulations for, 79
Siegel, Admiral, 64, 80
Signalling Guns for Hospital Ships, Regulations, 83
Sinking of Insured Vessels, Penalties for, 184
Sloman, R.M., Steamship Line, 160
Spanish-American War, 138, 140, 147, 165
Spanish War of Succession, 137
Starvation by Blockade, Improbability of, 133
State Insurance in Naval War, Suggestion, 182, 186
State Property, Position as regards Seizure, 8, 9, 26
v. Stein, L., 33
v. Stengel, 61, 81 *note*
Stoerk, 154
Supplies Depôts, Seizure of, 27
Sykes, J. A. C., xvi.

Taxes, Levying, by Occupying Power, 39
Telegraph and Telephone Wires, Seizure of, 30
Tetens, 113
Thiess, 139
Timber, Seizure of, 25
Trade :
  Commerce-destroying Wars, Slight Results of, 129, 137, 138
  English Losses by Capture, Historical Survey, x.
  External Traffic of European Powers, Table, 151, 152
  Hostility of Trade to War, 114, 155
  International Character of, increasing, 156, 157
  Modern Developments in Warfare, diminishing Loss of Trade, xi.
Transport—Seizure of Means of Transport, 27, 30

Treaties:
Breda, 1667, xiv.
Costa Rica and Germany, 1875, 99
Fishery Treaties, 1521, 71
France and N. America, Feb. 6, 1778, 68
Paris, 1857, ix.
Private Property, Treaties securing Inviolability, 2
United States and Peru, 1870, 99
"Trèves pêcheresses," 71
Triana, S. P., 127 *note*
Truce, Flag of Truce, 90
Twiss, Travers, 21

v. Ullmann, 9 *note*, 93, 117 *note*

Valois, Admiral, 95, 133, 180, 188
Vattel, 106
"Vereeniging von Assuradenren," 165
Vidari, 137
Vignol, Commandant, 143
Voigt, J., 168
Völlcker, 154 *note*
Vouchers, Redemption of, 47

War Risks in Insurance, 164
"War Sustains War," 5, 40, 93
Westlake, John, 120
Wheat:
Grain Stores suggested, 178;
Prices in time of War, 155, 177
Wheaton, 113
White, Andrew D., 131, 136, 154
Wiedenfeld, 174
Wiegner, 99, 154 *note*
Wildman, 13
Wilkinson, H. S., 178
Wilson, H. W., xvi.
Woerman Line, 160
Wolf, Christian, 188

Yorke, H. Redhead, Letters of, xvi. *note*

Zorn, A., 4, 9, 10, 12, 24, 34, 35 *note*, 39 *note*, 43 *note*, 45 *note*, 60
Zorn, Ph., 13 *note*, 14, 24, 124

CATALOGUE OF PUBLICATIONS

ISSUED BY P. S. KING & SON

Africa. Slave Traffic in Portuguese Africa. An Account of Slavery and Slave Trading in Angola and of Slavery in the Islands of San Thome and Principe. By H. R. Fox-Bourne. Demy 8vo. 1*s.* net. (Inland Postage 1*d.*)

Africa. *See also* CAPE COLONY; CONGOLAND; EGYPT; *and* SOUTH AFRICA.

Agricultural Labourer. History of the English Agricultural Labourer. By Dr. W. Hasbach. Translated from the German into English. With a Preface by Sidney Webb, LL.B. Demy 8vo. Cloth, 7*s.* 6*d.* net. (Inland Postage 5*d.*)

Agricultural Co-operation. By George Radford, M.A. Royal 8vo. 1*s.* net. (Inland Postage 2*d.*)

Agriculture. *See also* BOOKKEEPING; CO-OPERATION; CO-OPERATIVE FARMING; PEOPLE'S BANKS; SMALL HOLDERS; *and* VILLAGE BANKS.

Alcohol. *See* DRINK.

Anti-toxin Serum Treatment. *See* DIPHTHERIA.

Anti-Socialism. *See* NEWÆRA.

Arbitration. Industrial Conciliation and Arbitration. By Douglas Knoop, M.A. With a Preface by Professor S. J. Chapman. Cheap edition, cloth, 3*s.* 6*d.* net. (Inland Postage 4*d.*)

Armaments and War, The Extinction in Perpetuity of. By A. W. Alderson. Demy 8vo. Cloth, 7*s.* 6*d.* net. (Inland Postage 3*d.*)

Assurance. The Assurance Companies Act, 1909. With the Rules and Orders made thereunder by the Board of Trade. With Notes. By Maurice Hawtrey Truelove, of the Inner Temple, Barrister-at-Law. Demy 8vo. 5*s.* net. (Inland Postage 4*d.*)

Australia. A Colonial Autocracy. New South Wales under Governor Macquarie, 1810–1821. By Marion Phillips, B.A. (Melbourne), D.Sc. (Econ.), London. (In the Series of the London School of Economics.) Demy 8vo. 10*s.* 6*d.* net. (Inland Postage 5*d.*)

Bank of England, History of. By Professor A. Andréadès. Translated from the French into English. With a Preface by Professor H. S. Foxwell, M.A. Demy 8vo. Cloth, 10*s.* 6*d.* net. (Inland Postage 5*d.*)

Banking. *See* CO-OPERATIVE BANKING; CO-OPERATIVE CREDIT HANDBOOK; PEOPLE'S BANKS; *and* VILLAGE BANKS.

Bibliography of Books on Social and Economic Subjects. *See* WHAT TO READ.

Bibliography of Social Science. The Monthly Journal of the International Institute of Social Bibliography. 2*s.* net. Annual Subscription, 24*s.* post free.

This contains the titles of all books dealing with theoretical and practical economics, sociology, and social conditions, the theory and practice of finance, industrial and social statistics, colonial problems, movements of population, and social history; (2) All the more important articles upon these subjects which appear in periodicals; (3) The Parliamentary Reports of the chief civilised countries; (4) Official documents and publications not printed for ordinary circulation, such as the reports and journals of learned societies, commercial institutions, and trade unions, &c.

Up to the present no such bibliography for subjects on social science has been published in England, and it should prove useful to those engaged in political, administrative, or philanthropic work, as well as to all interested in social and economic problems.

[The Publishers will be pleased to send a specimen copy to any address on receipt of the amount of the postage, 2*d.*]

Bookkeeping. By George Radford, M.A. Reprinted from "Our Land." 3*d.* net. (Inland postage ½*d.*)

Boys and Girls, The Early Training of. An Appeal to Working Women. By Ellice Hopkins. This booklet is specially intended for Mothers' Unions. Crown 8vo. 3*d.* net; 2*s.* per dozen. (Inland Postage ½*d.*)

Brassworkers of Berlin and of Birmingham: A Comparison. Joint Report by R. H. Best, W. J. Davis, and C. Perks, of Birmingham. Fifth Edition. Demy 8vo. 6*d.* net. (Inland Postage 2*d.*) (*See* GERMAN WORKMAN *and* HOW THE ENGLISH WORKMAN LIVES.)

Building Societies. By Sir Edward Brabrook, C.B., late Chief Registrar of Friendly Societies. A popular treatise advocating the Development and Extension of Building Societies on right lines. Crown 8vo. 1*s.* net. (Inland Postage 2*d.*)

Building Societies. *See also* THRIFT.

Canada. Self-Government in Canada and how it was Achieved: the Story of Lord Durham's Report. By F. Bradshaw, M.A., D.Sc. Demy 8vo. Cloth, 3*s.* 6*d.* net. (Inland Postage 5*d.*)

Canada and the Empire. An Examination of Trade Preferences. By Hon. E. S. Montagu, M.P., and Bron Herbert (Lord Lucas). With a Preface by the Earl of Rosebery, K.G. Crown 8vo. Cloth, 3*s.* 6*d.* net. (Inland Postage 4*d.*)

Canals and Traders. The Argument Pictorial, as applied to the Report of the Royal Commission on Canals and Waterways. By Edwin A. Pratt, author of "British Canals: Is their Resuscitation Possible?" &c. Demy 8vo. 43 Illustrations and Maps. Paper, 1*s.* net. Cloth, 2*s.* 6*d.* net. (Inland Postage 3*d.*)

Cape Colony for the Settler. An Account of its Urban and Rural Industries, their probable Future Development and Extension. By A. R. E. Burton, F.R.G.S. Issued by Order of the Government of the Cape Colony. Demy 8vo. Cloth, with Plates and Map, 2*s.* 6*d.* net. (Inland Postage 5*d.*)

Case-Paper System. *See* POOR LAW.

Catalogue of Parliamentary Papers. *See* PARLIAMENTARY PAPERS.

Central (Unemployed) Body for London. *See* UNEMPLOYED.

Children's Care Committees. By Margaret Frere. Crown 8vo. 1*s.* net. (Inland Postage 1*d.*)

Children, Legislation in Regard to. Official Report of the Conference held on May 22 and 23, 1906, at the Guildhall, London, convened by the British Section of the International Congress for the Welfare and Protection of Children. Demy 8vo. 1*s*. net. (Inland Postage 1*d*.)

Children. *See also* BOYS AND GIRLS; INFANT, PARENT, AND STATE; INFANTILE MORTALITY; PHYSICAL CONDITION; MEDICAL EXAMINATION OF SCHOOLS AND SCHOLARS; *and* UNEMPLOYED.

China Imperial Maritime Customs. Reports on Trade, Medical Reports, and Reports on Special Subjects, such as Silk, Opium, Chinese Language, Music, &c. Issued by Authority of the Inspector-General of the China Imperial Maritime Customs. List sent, post free, on application.

China. *See also* OPIUM.

Colbert. *See* ECONOMIC POLICY OF COLBERT.

Coal, Foreign Trade in. By H. Stanley Jevons, M.A., B.Sc., F.S.S., Lecturer in Economics and Political Science. (In the Series of the University College of South Wales and Monmouthshire.) Royal 8vo. 1*s*. net.

Colonies. *See* AFRICA; AUSTRALIA; CANADA; *and* INDIA.

Columbia University, New York. Studies in History, Economics, and Public Law. Edited by the Faculty of Political Science at Columbia University. List of these publications sent, post free, on application.

Commercial Gambling: Works by Charles William Smith:—

"ORIGINAL" THEORIES UPON DEPRESSION IN TRADE, AGRICULTURE, AND SILVER. Price 1*s*. (Inland Postage 2*d*.)

COMMERCIAL GAMBLING: the Principal Cause of Depression in Agriculture and Trade. Price 2*s*. (Inland Postage 2*d*.)

THE PRESS ON COMMERCIAL GAMBLING. Price 6*d*. (Inland Postage 1*d*.)

CHARLES W. SMITH'S "REPLY" to the Final Report of the British Royal Commission on Agriculture on the Question of "International Gambling in 'Fictitious' Produce and Silver, under the Option and Future Settlement Systems." Price 2*s.* (Inland Postage 2*d.*)

PRICE-FAMINES—THE RESULT OF "CORNERS." The Crime of the Century. Price 1*s.* (Inland Postage 2*d.*)

THE TRANSLATED EDITION OF "THE RUIN OF THE WORLD'S AGRICULTURE AND TRADE"—"International Fictitious Dealings in Futures of Agricultural Produce and Silver, with their Effect on Prices." By Dr. G. Rühland, of Berlin. Prefaced by C. W. Smith. Price 1*s.* 6*d.* (Inland Postage 2*d.*)

FREE TRADE AND PROTECTION under the International Option and Future Systems, 1846 to 1904. Price 2*s.* 6*d.* net. (Inland Postage 4*d.*)

THE ECONOMIC RUIN OF THE WORLD: International, Commercial, and Financial Gambling in Options and Futures (Marchés à Terme). Price 5*s.* net. (Inland Postage 4*d.*)

A MANIFESTO ON INTERNATIONAL, FINANCIAL, AND COMMERCIAL GAMBLING in Options and Futures (Marchés à Terme): The World's Greatest Perils. Price 6*d.* (Inland Postage 1*d.*)

A MANIFESTO ON INTERNATIONAL, FINANCIAL, AND COMMERCIAL GAMBLING in Options and Futures (Marchés à Terme) in conjunction with Free Trade and Protection. Price 1*s.* (Inland Postage 1*d.*)

Commerce. *See* BANK OF ENGLAND; IRELAND; LONDON; LONDON MONEY MARKET; *and* RAILWAYS.

Commons, House of, and Taxation. By Archer Wilde. Demy 8vo. 6d. net. (Inland Postage ½*d.*)

Communal and Individual Responsibility as Regards Health Conditions. By Mark H. Judge. Reprinted from the *Westminster Review*. Demy 8vo. 6*d*. net. (Inland Postage ½*d*.)

Communal Currency, An Example of. The Facts about the Guernsey Market House. Compiled from original documents. By J. Theodore Harris, B.A. With an Introduction by Sidney Webb, LL.B. (In the Series of the London School of Economics.) Crown 8vo. Paper, 1*s*. net. Cloth, 1*s*. 6*d*. net. (Inland Postage 1½*d*.)

Consols, British, and French Rentes. By C. A. Stanuell. Demy 8vo. 6*d*. net. (Inland Postage 1*d*.)

Co-operation. International Co-operative Bibliography. Compiled and Edited by the Executive Committee of the International Co-operative Alliance. Demy 8vo. Cloth, 7*s*. 6*d*. net. (Inland Postage 4*d*.)

Co-operation. International Co-operative Congress. Report of the Proceedings of the Seventh Congress of the International Co-operative Alliance held at Cremona on September 22–25, 1907. Demy 8vo. 3*s*. net. (Inland Postage 3*d*.)

Co-operation at Home and Abroad. An Account of the Co-operative Movement in Great Britain and other Countries. By C. R. Fay, B.A., D.Sc. Demy 8vo. Cloth, 10*s*. 6*d*. net. (Inland Postage 5*d*.)

Co-operation. *See also* AGRICULTURAL CO-OPERATION; PEOPLE'S BANKS; *and* SMALL HOLDERS.

Co-operative Banking: Its Principles and Practice. With a Chapter on Co-operative Mortgage-Credit. By H. W. Wolff. Demy 8vo. Cloth, 7*s*. 6*d*. net. (Inland Postage 5*d*.)

Co-operative Credit Banks: A help for the Labouring and Cultivating Classes. By H. W. Wolff. Crown 8vo. 6*d*. (Inland Postage 1*d*.)

Co-operative Credit Handbook. By H. W. Wolff. Crown 8vo. 1*s*. net. (Inland Postage 2*d*.)

Co-operative Farming. By W. Bulstrode. A Review of the Causes which have led to the Exodus of the Villagers to the Towns, and a Suggestion for a New Scheme on Commercial Principles. Crown 8vo. 3*d.* net. (Inland Postage ½*d.*)

County Councils. What County Councils can do for the People. By W. Thompson. Demy 8vo, paper, 6*d.* net; cloth, 1*s.* net. (Inland Postage 1*d.*)

Course of Average Prices of General Commodities, 1820–1907. Compiled by Augustus Sauerbeck, F.S.S. Royal 4to. With folding Diagram. 1*s.* net. (Inland Postage 1*d.*)

Danish Poor Relief System. *See* POOR LAW.

Democracy. *See* GERMAN SOCIAL DEMOCRACY; LIBERALISM; *and* SOCIAL DEMOCRACY.

Diphtheria. Report of the Bacteriological Diagnosis, and the Anti-Toxin Serum Treatment of cases admitted to the Hospitals of the Metropolitan Asylums Board during the years 1895–6. By G. Sims Woodhead, M.D. Foolscap. 7*s.* 6*d.* net. (Inland Postage 6*d.*)

Drink. Case for Municipal Drink Trade. By Edward R. Pease. Crown 8vo. Cloth, 2*s.* 6*d.* net; paper, 1*s.* net. (Inland Postage 3*d.*)

Drink. Temperance Reform in the United States. Compiled by A. W. Richardson. With coloured Map. 2*d.* (Inland Postage ½*d.*)

Drink. *See also* NIGERIA.

Economic Policy of Colbert. By A. J. Sargent, M.A. (In the Series of the London School of Economics.) Crown 8vo. Cloth, 2*s.* 6*d.* net. (Inland Postage 3*d.*)

Education. A Short History of National Education in the United Kingdom. By T. Lloyd Humberstone, B.Sc. Demy 8vo. Illustrated. 3*d.* net. (Inland Postage 2*d.*)

*

Education. *See also* BOYS AND GIRLS; CHILDREN'S CARE COMMITTEES; MEDICAL EXAMINATION OF SCHOOLS AND SCHOLARS; *and* PHYSICAL CONDITION OF SCHOOL CHILDREN.

Egypt. The Administration of Justice in Egypt. By H. R. Fox Bourne. Edited, with a Preface, by John M. Robertson, M.P. Demy 8vo, 72 pp. 6*d.* (Inland Postage 1*d.*)

Elections. Practical Notes on the Management of Elections. By Ellis T. Powell, LL.B. (In the Series of the London School of Economics.) Royal 8vo. 1*s.* 6*d.* net. (Inland Postage 2*d.*)

Factory Legislation, History of. By B. L. Hutchins and A. Harrison, D.Sc. With a Preface by Sidney Webb, LL.B. (In the Series of the London School of Economics.) Second edition. Demy 8vo. Cloth, 6*s.* net. (Inland Postage, 4*d.*)

Farming. *See* AGRICULTURE; AGRICULTURAL LABOURER; *and* CO-OPERATIVE FARMING.

Feeble-minded. The Problem of the Feeble-minded. An Abstract of the Report of the Royal Commission on the Care and Control of the Feeble-minded. With an Introduction by Sir Edward Fry, G.C.B., and Contributions by Sir Francis Galton, F.R.S., Rev. W. R. Inge, M.A., Professor A. C. Pigou, and Miss Mary Dendy. Demy 8vo. 1*s.* net. (Inland Postage, 2*d.*)

Finance. *See also* BANKING; CONSOLS; LONDON; MONEY; *and* PUBLIC FINANCE.

Fiscal Fallacies. By Congreve Jackson. Second Edition. Crown 8vo. 3*d.* net. (Inland Postage ½*d.*)

Free Trade. Elements of the Fiscal Problem. By L. G. Chiozza-Money. Demy 8vo. Cloth, 3*s.* 6*d.* net. (Inland Postage 4*d.*)

Free Trade. *See also* BRASSWORKERS; CANADA AND THE EMPIRE; COMMERCIAL GAMBLING; PROTECTION; *and* TARIFFS.

German Social Democracy. Six Lectures delivered at the London School of Economics. By the Hon. Bertrand Russell, B.A. With an Appendix on Social Democracy and Woman's Question in Germany, by Alys Russell, B.A. (In the Series of the London School of Economics.) Crown 8vo. Cloth, 3*s.* 6*d.* net. (Inland Postage 3*d.*)

German Universities. A Review of Professor Paulsen's Work on the German University System. By Mabel Bode, Ph.D. With a Preface and Appendix. Demy 8vo. 1*s.* net. (Inland Postage 2*d.*)

German Workman, The: A Study in National Efficiency. By William Harbutt Dawson. A Survey of German Social Legislation and Social Reform Institutions, as they affect the Working-classes. Crown 8vo. Cloth, 6*s.* net. (Inland Postage 4*d.*) *See* BRASSWORKERS *and* WORKMEN.

Health. *See* COMMUNAL; HOUSING; INFANT, PARENT, AND STATE; INFANTILE MORTALITY; MEDICAL EXAMINATION OF SCHOOLS AND SCHOLARS; *and* SANITARY.

History. Select Documents Illustrating Mediæval and Modern History. A Text Book for use in Colleges and by all Students of History. By Emil Reich. Demy 8vo. Cloth, 21*s.* net. (Inland Postage 6*d.*)

History. *See also* AGRICULTURAL LABOURER; BANK OF ENGLAND; COLUMBIA UNIVERSITY; EDUCATION; FACTORY LEGISLATION; IRELAND; LONDON MUNICIPAL GOVERNMENT; LORDS; PALEOGRAPHY; PHILANTHROPY; POOR LAW; *and* RATES.

Handbook to the Housing and Town Planning Act, 1909. By W. Thompson, author of "The Housing Handbook," "Housing Up-to-Date," and "What County Councils can do for the People." Demy 8vo, Paper covers, 1*s.* net. Cloth, 2*s.* net. (Inland Postage 3*d.*)

Housing and Town-Planning Act, 1909, The, as it Affects Rural Districts. By Annette Churton. Royal 8vo. 2*d.* net. (Inland Postage 1*d.*)

Housing Handbook, Up-to-Date. A Practical Manual for the use of Officers, Members, and Committees of Local Authorities, and Social or Fiscal Reformers. By Alderman W. Thompson. Second edition. Demy 8vo. Cloth. Illustrated, 7*s.* 6*d.* net. (Inland Postage 6*d.*)

Housing. Public Health and Housing. The Influence of the Dwelling upon Health in Relation to the Changing Style of Habitation. Being the Milroy Lectures delivered before the Royal College of Physicians. Revised and Enlarged. By J. F. J. Sykes, M.D., B.Sc. Crown 8vo. Cloth, Diagrams, 5*s.* net. (Inland Postage 3*d.*)

India Office and Government of India. List of the more important of these Publications sent post free, on application.

Industrial Conciliation and Arbitration. By Douglas Knoop, M.A. With a Preface by Professor S. J. Chapman. Cloth, 3*s.* 6*d.* net (Inland Postage 3*d.*)

Industrial Conditions. *See* BRASSWORKERS; THE GERMAN WORKMAN; *and* WORKMEN.

Infantile Mortality. Report of the Proceedings of National Conference on Infantile Mortality, held at Caxton Hall, Westminster, on the 13th and 14th June, 1906. Demy 8vo. Limp cloth, 1*s.* 6*d.* net. (Inland Postage 3*d.*)

Infantile Mortality. Report of the Proceedings of the Second National Conference on Infantile Mortality, held at Caxton Hall, Westminster, on the 23rd, 24th, and 25th March, 1908. Demy 8vo. Limp cloth, 1*s.* 6*d.* net. (Inland Postage 3*d.*)

Infantile Mortality and Infants Milk Depôts. By G. F. McCleary, M.D., D.P.H. Illustrated. Crown 8vo. Cloth, 6*s.* net. (Inland Postage 4*d.*)

Infant Mortality: Statistical Analysis of, and its Causes in the United Kingdom. By Helen M. Blagg. Demy 8vo. 1*s.* net. (Inland Postage 1*d.*)

Infant, Parent, and State. A Social Study and Review. By H. Llewellyn Heath, D P.H. With a Preface by Professor G. Sims Woodhead, M.D. Crown 8vo. Cloth, illustrated, 3*s*. 6*d*. net. (Inland Postage 3*d*.)

Insurance Against Unemployment. By D. F. Schloss. Crown 8vo, cloth, 3*s*. 6*d*. net. (Inland Postage 3*d*.)

Ireland. History of the Commercial and Financial Relations between England and Ireland. By Alice Effie Murray, D.Sc. Preface by W. A. S. Hewins, M.A. (In the Series of the London School of Economics.) Demy 8vo. Cloth, 3*s*. 6*d*. net. (Inland Postage 5*d*.)

Ireland. Paraguay on Shannon: The Price of a Political Priesthood. By F. Hugh O'Donnell, M.A. Demy 8vo, cloth, 6*s*. net. (Inland Postage 4*d*.)

Ireland. *See also* PRICE OF HOME RULE; *and* POLITICAL PRIESTS AND IRISH RUIN.

Land, Distribution of. By the Hon. Rollo Russell. Demy 8vo. 3*d*. net. (Inland Postage 2*d*.)

Land Values. Rating of Land Values. Notes on the Proposal to levy Rates in respect of Site Values. By Arthur Wilson Fox, C.B. Second edition. Demy 8vo. Cloth, 3*s*. 6*d*. net. (Inland Postage 3*d*.)

Law of Prize on Land and Sea. By Dr. Hans Wehberg, of the University of Bonn. Translated from the German into English. With a Preface by John M. Robertson, M.P. [*In the Press*.

Liberalism. The Crisis of Liberalism. New Issues of Democracy. By J. A. Hobson. Demy 8vo. Cloth. 300 pp. 6*s*. net. (Inland Postage 4*d*.)

Licensing. *See* DRINK.

Light Railways Procedure: Reports and Precedents. Vol. I. By J. Stewart Oxley, M.A., of the Inner Temple, Barrister-at-Law. Demy 8vo. Cloth, 480 pages. 21*s*. net. (Inland Postage 6*d*.)

Light Railways Procedure: Reports and Precedents. Vol. II. By J. Stewart Oxley, M.A., of the Inner Temple, Barrister-at-Law, assisted by S. W. P. Beale, B.A., of Lincoln's Inn, Barrister-at-Law. Demy 8vo, cloth, 376 pages. 21*s.* net. (Inland Postage 5*d.*)

Liquor Traffic. *See* DRINK; *and* NIGERIA.

Local Government. *See* COMMUNAL CURRENCY; HOUSING; LONDON MUNICIPAL GOVERNMENT; NATIONAL AND LOCAL FINANCE; POOR LAW; TAXATION; *and* TOWN PLANNING.

Local Taxation in London. *See* LONDON.

London Building Act, Tribunal of Appeal under the. A Manual for Appellants. By Charles H. Love. Demy 8vo. Cloth, 3*s.* 6*d.* net. (Inland Postage 3*d.*)

London County Council. Messrs. P. S. King & Son are the publishers appointed for the sale of the reports and publications of the London County Council. Special catalogue, arranged under subjects, post free on application.

London Municipal Government. The History of a Great Reform, 1880–1888. By John Lloyd, Hon. Secretary and Secretary of the Municipal Reform League. Large quarto, 72 pp., 21 illustrations, handsomely bound in half blue calf. Special edition limited to 200 copies. Price £1 1*s.* net. (Inland Postage 5*d.*)

London. Local Taxation in London. By M. E. Lange. With a Preface by Lord Welby. Demy 8vo. 1*s.* net. (Inland Postage 1½*d.*)

London: Mechanism of the City. An Analytical Survey of the Business Activities of the City of London. By Ellis T. Powell, LL.B. (Lond.), B.Sc., of the Inner Temple, Barrister-at-Law. [*In the Press.*

London Pride and London Shame. By L. Cope Cornford. Demy 8vo. Cloth, 6*s.* net. (Inland Postage 4*d.*)

Lords, House of, and Taxation. By Ernest E. Williams. Demy 8vo. 6*d.* net. (Inland Postage ½*d.*)

Lords, The. Their History and Powers, with Special Reference to Money Bills and the Veto. By Adrian Wontner, of Gray's Inn, Barrister-at-Law. Crown 8vo. 1*s.* net. (Inland Postage 2*d.*)

Lords. *See also* SUPREME SENATE.

Machine Drawing. A Text-book for Students preparing for Science Examinations in Technical and Evening Schools. By Alfred P. Hill. Demy 4to. Limp cloth, 2*s.* 6*d.* net. (Inland Postage 3*d.*)

Medical Examination of Schools and Scholars. A Manual for School Doctors and Educationalists. A Symposium of Experts. Edited by T. N. Kelynack, M.D. Demy 8vo. Cloth, 10*s.* 6*d.* net. (Inland Postage 6*d.*)

Money. A Corner in Gold and our Money Laws. An Argument against the Main Defects of our Money System. With a reprint of the speeches of the Right Hon. Sir Robert Peel, Bart., in the House of Commons, 1844, on the Renewal of the Bank Charter and the State of the Law affecting Currency and Banking. Crown 8vo. Cloth, 2*s.* 6*d.* net.

Money. The Rise of the London Money Market, 1640–1826. By W. Roosegaarde Bisschop, LL.D. With an Introduction by Prof. H. S. Foxwell, M.A. Crown 8vo. 5*s.* net. (Inland Postage 4*d.*)

Mothers' Unions. *See* BOYS AND GIRLS.

Motor Traction. The Locomotion Problem. By Charles Bright, F.R.S.E., M.I.E.E. Demy 8vo. 1*s.* net. (Inland Postage 1½*d.*)

Municipal Manual. A Description of the Constitution and Functions of Urban Local Authorities. By A. E. Lauder. Crown 8vo, 3*s*. 6*d*. net. (Inland Postage 4*d*.)

Municipal. *See also* DRINK; HOUSING; RATES; TAXATION; *and* TOWN PLANNING.

National and Local Finance. A Review of the Relations between the Central and Local Authorities in England, France, Belgium, and Prussia during the Nineteenth Century. By J. Watson Grice, B.Sc. With a preface by Sidney Webb, LL.B. (In the Series of the London School of Economics). Demy 8vo. Cloth, 10*s*. 6*d*. net. (Inland Postage 5*d*.)

Nationalisation of Railways. *See* RAILWAYS.

Newæra. A Socialist Romance, with a Chapter on Vaccination. By EDWARD G. HERBERT, B.Sc. Demy 8vo. 6*s*. net. (Inland Postage 4*d*.)

Nigeria, Liquor Traffic in Southern. As set forth in the Report of the Government Committee of Inquiry, 1909. An Examination and a Reply. Published for the Native Races and the Liquor Traffic United Committee. Royal 8vo, 3*d*. net. (Inland Postage 1½*d*.)

Opium: International Opium Commission, Shanghai, February, 1909. Complete Official Report of Proceedings and Reports of Delegations. In 2 Vols. Volume I.—Report and Minutes of Proceedings. Volume II.—Reports of Delegations. F'cap. folio. About 500 pp. As containing the Findings of the Commission and the complete Reports of all the Delegations, these Volumes will be indispensable to all students of the subject. Price 10*s*. net. (Inland Postage 6*d*.)

Paleography. Pipe Roll of the Bishopric of Winchester. From the Fourth Year of the Episcopate of Peter des Roches, A.D. 1207–1208. By the Class in Paleography at the London School of Economics, under the supervision of Hubert Hall, F.S.A. (In the Series of the London School of Economics.) F'cap folio, 15*s*. net. (Inland Postage 5*d*.)

Parliamentary Papers, 1801–1900, Catalogue of. A General Catalogue of the principal Reports and Papers published during the nineteenth century—also a few of earlier date—with prices, and in most cases analyses of contents. Printed with wide margins for convenience of librarians and others wishing to make notes, shelf, or reference numbers, &c. Medium 4to. Full buckram, 7*s.* 6*d.* net. (Inland Postage 6*d.*)

Parliamentary Papers, Monthly Catalogue of. Post free on application.

Peace. *See* WAR.

People's Banks: A Record of Social and Economic Success. By H. W. Wolff, author of "Co-operative Banking," "Agricultural Banks," &c. Third Edition, Revised and Enlarged. Demy 8vo. Cloth, 600 pages. 6*s.* net. (Inland Postage 6*d.*)

Philanthropy. History of English Philanthropy, from the Dissolution of the Monasteries to the taking of the First Census. By B. Kirkman Gray. Demy 8vo. Cloth, 7*s.* 6*d.* net. (Inland Postage 4*d.*)

Philanthropy. Philanthropy and the State, or Social Politics. By B. Kirkman Gray. Edited by Eleanor Kirkman Gray and B. L. Hutchins. A companion volume to "History of English Philanthropy," by the same author. Demy 8vo. Cloth, 7*s.* 6*d.* net. (Inland Postage 5*d.*)

Physical Condition of School Children. Report on the Physical Condition of 1,400 School Children in the City of Edinburgh, together with some Account of their Homes and Surroundings. Prepared by a Committee of Edinburgh Citizens, and published for the Edinburgh Charity Organisation Society. Royal 4to, 5*s.* net. (Inland Postage, 5*d.*)

Political Priests and Irish Ruin. By F. H. O'Donnell, M.A., author of "A History of the Irish Parliamentary Party." A Second Edition, revised and brought up to date, of the author's previous work "Paraguay on Shannon." Demy 8vo. 1*s.* net. (Inland Postage 3*d.*)

Political Socialism: A Remonstrance. A Collection of Papers by Members of the British Constitution Association, with Presidential Addresses by Lord Balfour of Burleigh and Lord Hugh Cecil. Edited by Mark H. Judge. Crown 8vo. Paper boards, 1*s.* net; cloth, 1*s.* 6*d.* net. (Inland Postage 3*d.*)

Poor Law. Administrative Reform and the Local Government Board. By J. Theodore Dodd, M.A. Crown 8vo. 1*s.* 6*d.* net. (Inland Postage 2*d.*)

Poor Law. The English Poor Laws: their History, Principles, and Administration. Three Lectures delivered at the Women's University Settlement, Southwark. By Sophia Lonsdale. Third and revised edition. Crown 8vo. 1*s.* net. (Inland Postage 2*d.*)

Poor Law. The Danish Poor Relief System: an Example for England. By Edith Sellers. An account of the Poor Relief System as practised in Denmark, which is generally considered to be a model of its kind. Crown 8vo. Limp cloth, 2*s.* net. (Inland Postage 2*d.*)

Poor Law. Glimpses into the Abyss. By Mary Higgs. An account of the personal explorations undertaken by Mrs. Higgs, who, disguised as a tramp, has spent days and nights in tramp-wards, lodging-houses, and shelters. Crown 8vo. Cloth, 3*s.* 6*d.* net. (Inland Postage 4*d.*)

Poor Law. History of the English Poor Law, 924–1853. In connection with the legislation and other circumstances affecting the condition of the people. By Sir George Nicholls, K.C.B. Revised edition, with a Biography and Portrait of the Author. 2 vols. Demy 8vo. Cloth, 10*s.* 6*d.* net. (Inland Postage 7*d.*)

Poor Law. History of the English Poor Law, 1834–1898, By Thomas Mackay. Demy 8vo. Cloth, 7*s.* 6*d.* net. (Inland Postage 6*d.*)

Poor Law. The History Sheet or Case-Paper System. A collection of Papers read at various Poor Law Conferences, with the Discussions thereon and Specimen Forms in use in various Unions. With an Introduction by Sir William Chance, Bart. Crown 8vo. Cloth back, 2*s.* net. (Inland Postage 3*d.*)

Poor Law. Memorandum on the Reports of the Royal Commission on the Poor Laws. By Sir Arthur Downes. Demy 8vo. 2*d.* net. (Inland Postage ½*d.*)

Poor Law. Memorandum on the Reports of the Royal Commission on the Poor Laws. By Miss Octavia Hill. 1*d.* 7*s.* 6*d.* per 100 copies. (Inland Postage ½*d.*)

Poor Law. Our Treatment of the Poor. By Sir William Chance, Bart., M.A. Crown 8vo. Cloth, 2*s.* 6*d.* (Inland Postage 3*d.*)

Poor Law: The Poor and Their Rights. How to Obtain them Under Existing Legislation. By J. Theodore Dodd, M.A., Guardian and Councillor for the City of Oxford. Demy 8vo. 6*d.* net. (Inland Postage 1*d.*)

Poor Law: Poor Law Reform, *viâ* Tertia. The Case for the Guardians. By Sir William Chance, Bart., M.A. Crown 8vo. 1*s.* net. Cloth, 1*s.* 6*d.* net. (Inland Postage 3*d.*)

Poor Law. The Starting Point of Poor Law Reform. The Principles in Common, and at issue, in the Reports of the Poor Law Commission. By John H. Muirhead, M.A., LL.D. With an Introduction by Sir Oliver Lodge, LL.D., F.R.S. Second Edition. Demy 8vo. Cloth back, 2*s.* net. (Inland Postage 3*d.*)

Poor Law. *See also* VAGRANCY.

Poor Law Conferences. Official Reports of the Proceedings of the Central and District Poor Law Conferences, containing the Papers read and the full Discussions thereon. Report of any single Conference, 1*s.*; all Conferences, each sent as soon as published, 10*s.* 6*d.* per annum; Bound Volume, with index, 12*s.* net. (Inland Postage 5*d.*)

Poor Law Orders. Arranged and Annotated by H. Jenner-Fust, M.A. Second edition. Royal 8vo. 42*s.* net. (Inland Postage 6*d.*)

Poverty, Causes of. By Callaghan McCarthy, B.A. A graphic description of the parts and appearances of this planet—of its surface, its instruments of production, the items of property, its vegetable and animal life, its human communities, &c. The author brings all these vividly before the reader's mind, and explains the defects that give rise to human poverty. Crown 8vo. Cloth, 2*s.* net. (Inland Postage 2½*d.*)

Practical Notes on the Management of Elections. By Ellis T. Powell, LL.B. (In the Series of the London School of Economics.) Demy 8vo. Paper, 1*s.* 6*d.* net. (Inland Postage 1½*d.*)

Price of Home Rule, The. By L. Cope Cornford. Crown 8vo. Cloth, 1*s.* net. Paper, 6*d.* net. (Inland Postage 1*d.*)

Prices. Course of Average Prices of General Commodities, 1820–1907. Compiled by Augustus Sauerbeck, F.S.S. Royal 4to. With folding Diagram. 1*s.* net. (Inland Postage 1*d.*)

Production and Distribution. A History of the Theories of Production and Distribution in English Political Economy from 1776–1848. By Edwin Cannan, M.A., LL.D. Second edition. Demy 8vo. Cloth, 10*s.* 6*d.* net. (Inland Postage 5*d.*)

Progress: Civil, Social, and Industrial. The Quarterly Magazine of the British Institute of Social Service. 6*d.* net. (Inland Postage 2*d.*)

Contains the Official Record of the National League for Physical Education and Improvement, and information regarding Foreign Social Activities, by Dr. Rodolphe Broda. A full list of all Publications on Social Topics, including Articles in Periodicals during the preceding quarter, forms an invaluable feature of each issue.

The Publishers will be pleased to send a specimen copy to any address on receipt of the amount of the postage.

Protection in Canada and Australasia. By C. H. Chomley, B.A., LL.B. Crown 8vo. Cloth, 3*s.* 6*d.* net. (Inland Postage 3*d.*)

Protection in France. By H. O. Meredith, M.A. Crown 8vo. Cloth, 3*s.* 6*d.* net. (Inland Postage 3*d.*)

Protection in Germany. A History of German Fiscal Policy during the Nineteenth Century. By William Harbutt Dawson. Crown 8vo. Cloth, 3*s.* 6*d.* net. (Inland Postage 4*d.*)

Protection in the United States. A study of the origin and growth of the American Tariff System and its social and economic influences. By A. Maurice Low. Crown 8vo. Cloth, 3*s.* 6*d.* net. (Inland Postage 3*d.*)

Protection. *See also* CANADA AND THE EMPIRE; COMMERCIAL GAMBLING; FISCAL FALLACIES; FREE TRADE; SEVEN YEARS OF THE SUGAR CONVENTION; TARIFFS; *and* TARIFF REFORM.

Public Finance. The King's Revenue. An account of the Revenue and Taxes raised in the United Kingdom, with a short history of each Tax and Branch of the Revenue. By W. M. J. Williams. Demy 8vo. Cloth, 6*s.* net. (Inland Postage 4*d.*)

Railways: The Railway Clerk's Assistant. By Geo. B. Lissenden. Crown 8vo. 1*s.* 6*d.* net. (Inland Postage 3*d.*)

Railway Trader's Guide, The. The Railway Trader's Guide to Forwarding, Receiving, Railway Charges, and all other Matters incidental to Transactions with the Railway Companies. By Geo. B. Lissenden. Royal 8vo. Cloth. 250 pp., including 48 pp. of Ready Reckoner, in addition to other tables and specimen forms. 7*s.* 6*d* net. (Inland Postage 5*d.*)

Railways. Monthly Bulletin of the International Railway Congress (English edition). Illustrated. Single numbers vary in price from 2*s.* to 6*s.* each. Subscription for 12 months, Jan.–Dec. only 24*s.*

Railways. Railways and Nationalisation. By Edwin A. Pratt. Crown 8vo. Cloth, 2*s.* 6*d.* net. (Inland Postage 4*d.*)

Railways. The Safety of British Railways; or Railway Accidents, how caused, and how prevented. By H. Raynar Wilson. Crown 8vo. Cloth, 3*s.* 6*d.* net. (Inland Postage 3*d.*)

Railways. *See also* LIGHT RAILWAYS.

Rates. History of Local Rates in England. By Edwin Cannan, M.A. A summary of the Development of one element of taxation. (In the Series of the London School of Economics.) Crown 8vo. Cloth, 2*s.* 6*d.* net. (Inland Postage 3*d.*)

Rates. Being the Revenue and Expenditure of Boroughs and Urban District Councils of 10,000 or more inhabitants (England and Wales) analysed and compared. By C. Ashmore Baker, A.M.I.E.E. F'cap. folio. Paper boards. 2*s.* 6*d.* net. (Inland Postage 4*d.*)

Rates. *See also* LONDON; MUNICIPAL; NATIONAL AND LOCAL FINANCE; *and* TAXATION AND LOCAL GOVERNMENT.

Rating and Assessment in London. Quinquennial Valuation, 1910. A Guide for Officials and Ratepayers. With information as to the Principles upon which the Valuation is made, and as to how the Valuation is tested and in a Proper case reduced or otherwise adjusted. By Edwin Austin, of Gray's Inn, Barrister-at-Law. Crown 8vo. Cloth, 2s. net. Paper, 1*s.* net. (Inland Postage 2*d.*)

Rating of Land Values. *See* LAND VALUES.

Referendum. *See* LIBERALISM; *and* SWITZERLAND.

Sanitary Inspector's Guide. A Practical Treatise on the Public Health Act, 1875, and the Public Health Acts Amendment Act, 1890, so far as they affect the Inspector of Nuisances. By H. Lemmoin-Cannon. Crown 8vo. Cloth, 3*s.* 6*d.* net. (Inland Postage 3*d.*)

Schools, Medical Examination of. *See* MEDICAL.

Second Chamber. *See* LIBERALISM; LORDS; *and* SUPREME SENATE.

Seven Years of the Sugar Convention: 1903–1910. A Vindication of Mr. Chamberlain's Imperial and Commercial Policy. By Ralph T. Hinckes, M.A. Crown 8vo. 3*d.* net. (Inland Postage 1*d.*)

Sewage Works Analyses. An account of the methods of analysis in use in the laboratory of the Manchester Corporation sewage works. By Gilbert J. Fowler, F.I.C. Crown 8vo. Cloth, illustrated, 6s. net. (Inland Postage 4*d.*)

Site Values. *See* LAND VALUES.

Small Holders: What they must do to succeed. With a chapter on the revival of country life. By Edwin A. Pratt. Crown 8vo. Cloth back, 2*s.* net. (Inland Postage 3*d.*)

Small Holdings. The Small Holdings Controversy. Ownership *v.* Tenancy. By Mrs. Roland Wilkins (L. Jebb). With a Prefatory Letter by Lord Carrington. Demy 8vo. 2*d.* net. (Inland Postage ½*d.*)

Small Holdings in England. By Frederick Impey. Demy 8vo. 3*d.* net. (Inland Postage, 1*d.*)

Social Democracy, New. A Study for the Times. By J. H. Harley, M.A., late Scholar of Mansfield College, Oxford; Vice-President of the National Union of Journalists. Demy 8vo. Cloth, 6*s.* net. (Inland Postage 4*d.*)

Social Democracy. *See also* GERMAN SOCIAL DEMOCRACY; *and* LIBERALISM.

Socialism: Newæra: A Socialist Romance, with a Chapter on Vaccination. By Edward G. Herbert, B.Sc. Demy 8vo. 6*s.* net. (Inland Postage 4*d.*)

Socialism. *See also* GERMAN SOCIAL DEMOCRACY; LIBERALISM; SOCIAL DEMOCRACY; *and* POLITICAL SOCIALISM.

Spencer. Herbert Spencer Refutes recent Misrepresentations. Professor Bourne's defamatory attacks met by excerpts culled from the Philosopher's works. By Alfred W. Tillett. Crown 8vo. 6*d.* net. (Inland Postage ½*d.*)

State Railways. *See* RAILWAYS.

Statistics, An Elementary Manual of. By Arthur L. Bowley, M.A., F.S.S., Reader in Statistics in the University of London. Author of "Elements of Statistics," &c. Demy 8vo. Cloth, 5*s.* net. (Inland Postage 4*d.*)

Statistics, Elements of. A Text Book for the use of students, actuaries, bankers, &c. By A. L. Bowley, M.A. Third and revised edition. (In the Series of the London School of Economics.) Demy 8vo. Cloth. Numerous Diagrams. 10*s.* 6*d.* net. (Inland Postage 5*d.*)

Supreme Senate and a Strong Empire, A. By R. V. Wynne. F'cap. 8vo. 6*d.* net. (Inland Postage ½*d.*)

Switzerland, Referendum in. By M. Simon Deploige. With a letter on the Referendum in Belgium by M. J. van den Heuvel. Translated by C. P. Trevelyan, M.P., and edited with notes, introduction, bibliography and appendices by Lilian Tomn. (In the Series of the London School of Economics.) Crown 8vo. Cloth, 7*s.* 6*d.* net. (Inland Postage 4*d.*)

Tariff Reform. The Manufacturer and the State. An Address by H. Hirst, M.I.E.E. Demy 8vo. 6*d.* net. (Inland Postage 1*d.*)

Tariff Reform. Fiscal Fallacies: A Comparison with Germany. By Congreve Jackson. Second Edition. Crown 8vo. 3*d.* net. (Inland Postage 1*d.*)

Tariff Reform, The Real Case for. Employment and Wages — How Free Trade "Blacklegs" Home Labour—Facts for Workmen by a Workman (T. Good). With a Preface by the Rt. Hon. J. Austen Chamberlain, M.P. Demy 8vo. 6*d.* net. (Inland Postage 1*d.*)

Tariffs. Statistical Studies Relating to National Progress in Wealth and Trade since 1882 : A plea for further inquiry. By Arthur L. Bowley, M.A. Crown 8vo. 2*s*. net. (Inland Postage 2*d*.)

Tariffs. Tariff Commission Report. List of the volumes containing Report and Summary of Evidence, Evidence of Witnesses, Replies to Forms, Tables, and Diagrams Dealing with Iron, Steel, Textile, Agriculture, Engineering, Pottery, Glass, Sugar and Confectionery, post free on application.

Tariffs. The Tariff Problem. By Professor W. J. Ashley. Second Edition. Crown 8vo. Cloth, 3*s*. 6*d*. net. (Inland Postage 4*d*.)

Tariffs. *See also* CANADA AND THE EMPIRE; COMMERCIAL GAMBLING; FREE TRADE; *and* PROTECTION.

Taxation. *See* COMMONS; FREE TRADE; LORDS; NATIONAL AND LOCAL FINANCE; PROTECTION; PUBLIC FINANCE; *and* TAXATION AND LOCAL GOVERNMENT.

Taxation and Local Government. By J. C. Graham. Fourth Edition, revised and brought up-to-date. By M. D. Warmington. Crown 8vo. Cloth, 2*s*. net. (Inland Postage 3*d*.)

Temperance. *See* DRINK.

Thrift, Approved Methods of. With a list of societies for its promotion. By Mrs. A. H. Johnson. Issued for the National Union of Women Workers of Great Britain and Ireland. Demy 8vo. 3*d*. net. (Inland Postage ½*d*.)

Thrift, Institutions for. By Sir Edward Brabrook, C.B., F.S.A. A useful little book for members of working men's clubs, friendly societies, building societies and other institutions of a similar nature. Crown 8vo. 6*d*. net. (Inland Postage 1*d*.)

Thrift Manual. A Manual on Thrift for the use of Teachers in Primary Schools. Demy 8vo. Limp cloth, 2*s*. net. (Inland Postage 2½*d*.)

Thrift. *See also* BUILDING SOCIETIES.

Town Planning Powers. The Practical Application of Town Planning Powers. Report of a National Town Planning Conference arranged by the Garden Cities and Town Planning Association, held at the Guildhall, London, on December 10, 1909. Papers and Speeches by Thomas Adams, J. W. Willis Bund, K.C., W. R. Davidge, H. V. Lanchester, A. R. Stenning, H. Inigo Triggs, Raymond Unwin, Paul Waterhouse, and Professors S. D. Adshead, Patrick Geddes, and Beresford Pite. Edited by Ewart G. Culpin. Demy 8vo. 1*s.* net. (Inland Postage 2½*d.*)

Town Planning. *See also* HOUSING.

Trade Unions. Select Documents Illustrating the History of Trade Unionism. [1. The Tailoring Trade.] By F. W. Galton. With a Preface by Sidney Webb, LL.B. Crown 8vo. Cloth, 5*s.* net. (Inland Postage 4d.)

Tramps. *See* POOR LAW; UNEMPLOYED; VAGRANCY; *and* WHERE SHALL SHE LIVE?

Transport Facilities in the Mining and Industrial Districts of South Wales and Monmouthshire. Their future History and Development. By Clarence S. Howells, M.A. No. 2 of the Series of Publications of the Department of Economics and Political Science of the University College of South Wales and Monmouthshire. Edited by H. Stanley Jevons, M.A., B.Sc. 2*s.* net. (Inland Postage 1½*d.*)

Unemployed: Central Body for London. Preliminary Report on the work of the Central (Unemployed) Body for London to May 12, 1906. Foolscap 1*s.* net. (Inland Postage 2*d.*)

Second Report from May 12, 1906, to June 30, 1907. Foolscap. 1*s.* net. (Inland Postage 5*d.*)

Third Report of the Central Body, from July 1, 1907, to June 30, 1909. F'cap. 1*s.* 6*d.* net. (Inland Postage 5*d.*)

Unemployed. Insurance Against Unemployment. By David F. Schloss. Crown 8vo. Cloth, 3*s.* 6*d.* net. (Inland Postage 3*d.*)

Unemployed. The Labour Exchange in Relation to Boy and Girl Labour. By Frederick Keeling. Demy 8vo. 6*d.* net. (Inland Postage 1½*d.*)

Unemployed. Report of a Temporary Colony at Garden City for Unemployed Workmen mainly from West Ham during February, March and April, 1905. Carried out by the Trinity College (Oxford) Settlement, Stratford, London. Demy 8vo. 6*d.* net. (Inland Postage ½*d.*)

Unemployed. The Unemployables. By Edmond Kelly, M.A. With a Preface by Sir William Chance, Bart., M.A. Contains a full account of the Swiss Labour Colonies in the Canton of Berne. Crown 8vo. 6*d.* net. (Inland Postage 1*d.*)

Unemployed. The Unemployed: a National Question. By Percy Alden, M.A. With a Preface by Sir John Gorst, M.A. Second edition. Crown 8vo. Cloth, 2*s.* net. (Inland Postage 3*d.*)

Unemployment and the Unemployed. A Bibliography. Prepared by F. Isabel Taylor, B.Sc., Formerly Senior Student-Assistant in the Library of the London School of Economics. With a Preface by Sidney Webb, LL.B. (In the Series of the London School of Economics.) Demy 8vo. Cloth, 2*s.* net. Paper, 1*s.* 6*d.* net. (Inland Postage 2*d.*)

Unemployment. The Sun's Heat and Trade Activity as a Cause of Unemployment. By H. Stanley Jevons, M.A., B.Sc., F.S.S. Royal 8vo. Cloth, 2*s.* net. Paper, 1*s.* net. (Inland Postage, 2*d.*)

Vaccination and Vivisection. Politics and Disease. By A. Goff and J. H. Levy. Crown 8vo. Cloth, 3*s.* 6*d.* net. (Inland Postage 4*d.*)

Vagrancy. A Review of the Report of the Departmental Committee on Vagrancy, 1906. With answers to certain criticisms. By Sir William Chance, Bart., M.A. Crown 8vo. 6*d.* net. (Inland Postage, 1*d.*)

Vagrancy. A Vicar as Vagrant. By Rev. G. Z. Edwards. With a Preface by the Rector of Birmingham. Demy 8vo. 2*d*. (Inland Postage ½*d*.)

Vagrancy Problem, The. The Case for Measures of Restraint for Vagrants, Loafers, and Unemployables; with a Study of Continental Detention Colonies and Labour Houses. By William Harbutt Dawson, author of "The German Workman." Crown 8vo. 5*s*. net. (Inland Postage 4*d*.)

Village Banks. How to Start them; How to Work them; What the Rich may do to Help them, &c. By H. W. Wolff. Crown 8vo. 6*d*. (Inland Postage ½*d*.)

Vagrancy. *See also* POOR LAW; UNEMPLOYED; *and* WHERE SHALL SHE LIVE?

War. The Extinction in Perpetuity of Armaments and War. By A. W. Alderson. Demy 8vo. Cloth, 7*s*. 6*d*. net. (Inland Postage 3*d*.)

War. *See also* LAW OF PRIZE.

What County Councils can do for the People. By W. Thompson. Demy 8vo; paper, 6*d*.; cloth, 1*s*. (Inland Postage 1*d*.)

What to Read on Social and Economic Subjects. An Interleaved Bibliography. Fifth Edition. Demy 8vo. 1*s*. net. (Inland Postage 3*d*.)

Where Shall She Live? The Homelessness of the Woman Worker. Written for the National Association for Women's Lodging Homes. By Mary Higgs and Edward E. Hayward, M.A. Crown 8vo. Cloth, 2*s*. 6*d*. net. Paper, 1*s*. 6*d*. net. (Inland Postage 3*d*.)

Women. Educated Working Women. The Economic Position of Women Workers in the Middle Classes. By Clara E. Collet, M.A. Crown 8vo. Cloth, 2*s*. 6*d*. net; paper, 2*s*. net. (Inland Postage, 3*d*.)

Women. Women as Barmaids. Published for the Joint Committee on the Employment of Barmaids. With an Introduction by the Bishop of Southwark. Demy 8vo. 1*s*. net. (Inland Postage 1½*d*.)

Women. Women in the Printing Trades: A Sociological Study. Edited by J. R. Macdonald, M.P. With a Preface by Professor F. Y. Edgeworth. Demy 8vo. Cloth. Diagrams. 10*s.* 6*d.* net. (Inland Postage 4*d.*)

Workmen. How the English Workman Lives: Being the Experiences of a German Coal-miner in England. Translated by C. H. d'E. Leppington. Crown 8vo. 1*s.* net. (*See* BRASSWORKERS; *and* GERMAN WORKMAN.)